

THE *15 H a*
C A S E
O F
IMPOTENCY,

As Debated in ENGLAND;

In that Remarkable TRYAL, 1613.
between ROBERT Earl of ESSEX, and the
Lady FRANCES HOWARD, who, after
Eight Years Marriage, commenc'd a Suit
against him for IMPOTENCY.

CONTAINING

- I. The whole PROCEEDINGS and DEBATES
on both Sides.
- II. The REPORT of the Seven MATRONS
appointed to search the *Countess*.
- III. The Intrigue between Her and the
Earl of SOMERSET, who after the Di-
vorce married her.
- IV. A Detection of some Politicks in the
Court of King JAMES the First.

Written by GEORGE ABBOT, D. D. Lord
Archbishop of *Canterbury*.

In Two VOLUMES.

The THIRD EDITION.

LONDON, Printed for E. CURLL, at the *Dyal and*
Bible in Fleetstreet. 1719. [Price 5 s.]

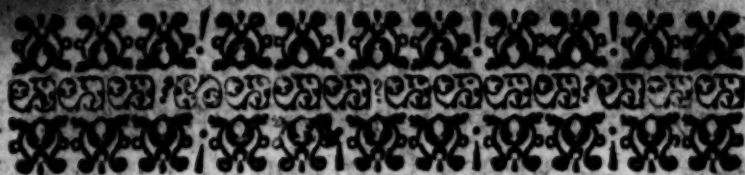
The PREFACE.

Manuscript of *Archbishop Abbot's*,
written in his own Hand. This Manuscript contains an exact Account of all the Artifice and Stratagem used in that Affair, and is not only very full and particular upon the Case, but lets us into a considerable Part of the Secrets and Politicks of King James's Reign. I must assure the Publick, that it is faithfully printed from the Original, which is now in the Hands of a learned Lawyer.


To make a Collection of this Nature, as perfect as I well could, there is added the Lord Audley's Tryal, and the Proceedings upon the Duke of Norfolk's Bill of Divorce, which, as they bear some Relation to this Subject, so they are now very rare, and valuable. The Duke of Norfolk's Case, in particular, employ'd some of our greatest Lawyers, who have made since very eminent Figures in their Profession, and contains all that can be said upon the Article of Divorce.

Inner - Temple,
Oct. 30. 1714.

SOME



SOME
ACCOUNT
OF
Archbishop *ABBOT*.

EORGE ABBOT, D. D. was
born at *Guilford* in *Surrey*,
and bred at *Oxford*, where
he became Master of *Uni-*
versity College, *An. 1604.*

upon the Translation of Dr. *Bancroft*
from the See of *London* to the Archbi-
shoprick of *Canterbury*, he was made
Bishop of that See; and in the Year
1611, at the Decease of *Bancroft*, suc-
ceeded him in that honourable Post.

An. 1619. He founded a large Hos-
pital at the Place of his Birth, himself
laying the first Stone, and endow'd it
with a liberal Maintenance.

An. 1621. As he was hunting in
Burnhill Park, belonging to my Lord
Zouch,

Some Account of Archbishop ABBOT.

Zouch, near *Hertford* Bridge, he kill'd the Keeper by Chance with a forked Arrow out of a Cross-bow, as he was shooting at a Deer. The Quære was, Whether he should incur the Penalty of Irregularity by this involuntary Manslaughter, or Suspension? but he was acquitted from either; yet himself out of a religious Tenderness of Mind, kept a solemn Anniversary Fast during his whole Life; and made a sufficient Provision for the Keeper's Widow and Children.

He govern'd the Church with great Prudence, and was in much Esteem with the People and the moderate Clergy; but in the Year 1627. many Discontents arising, he was by the Clamour of some turbulent Persons, sequestred from his Office and Jurisdiction, tho' in a very short Time he was graciously receiv'd again into Favour.

He was an eminent Preacher, and it is universally agreed that Gravity, Learning, and Piety, adorn'd his Life. He died at *Lambeth*, An. 1633.

THE

THE
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THE
CASE
OF

ROBERT, *Earl of Essex*;
AND THE
Lady FRANCES HOWARD.

Some MEMORIALS touching the Nullity
between the Earl of Essex and his
Lady, pronounc'd Sept. 25, 1613. at
Lambeth, and the Difficulties en-
dur'd in the same.



By Abbot Archbishop of
Canterbury.
Being at the Court at White-
Hall, on the 12th of May,
1613. or thereabouts, his
Majesty mov'd me, that I
would be a Commissioner in
a Controversy to be begun
between the Earl of *Essex* and his Lady,
for the separating of them, and when his
B Ma-

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Majesty had ended those few Words with me, my Lord Chamberlain, who was then in the Gallery, spake also unto me to that Purpose. It was unto me a Matter very strange, having heard before of some Discontentments between that noble Couple; but never imagining that Matters were come to that Head. My Answer was alike to both, *That I did not know the Ground whereupon they intended to move; but that if I were to be a Judge in any such Question, I would pray, that other Bishops, being near the Town and Court, might be join'd with me.* The Persons that were nam'd then, were, my Lord of London, my Lord of Ely, and my Lord of Litchfield, (for at that Time was my Lord of Bath with the Queen's Majesty at Bath.) Besides, I pray'd both the King's Majesty, and my Lord Chamberlain, *That before any such Thing were enter'd into, I might speak privately with my Lord of Essex, for the satisfying of mine own Mind; which by both was permitted unto me.* The Day after, I sent for the Earl, and having private Speech with him, only about the Ability of his Body, and nothing else, I found him generally much reserv'd in Talk, but only avowing the Ability of himself for Generation; and that he was resolv'd never to lay any Blemish upon himself that Way. I knew not well what to make of this; for I did not then understand, that

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And the Lady HOWARD. 3

that some Lords had met, before at *White-Hall* on both Parts, (the Lord Privy-Seal, the Lord Chamberlain, the Earl of *Southampton*, and the Lord *Knowles*, as afterwards I heard) to settle an Order by Consent, how this Prosecution should be; that is to say, That a Separation should be made, and my Lord's Honour every Way preserv'd.

Within a Day or two, coming to *White-Hall*, I had speech with the Lord Chamberlain, in the Gallery going towards *St. James's Park*. I might not reveal all Particulars of that which pass'd in private; but yet I told his Lordship, *That I had spoken with the Earl of Essex, and I perceiv'd it was like to be a Matter of great Difficulty, and therefore wish'd his Lordship to be well advis'd, before any thing was brought into Publick.* I told him, *That he must proceed either upon Confession or Proof: That it was probable, the Earl would not confess his own Impotency, for then he blemish'd himself: That my Lady's Oath in that Case, was not sufficient; and how other Proofs might be had, I could not conceive: That the Earl in open Estimation was to be thought an able Man: That his Father was not thought in that Kind unsufficient.* The Lord Chamberlain reply'd, *That, perhaps, the Father's Sin was punish'd upon the Son: That it was Truth, that the Earl had no Ink in his Pen: That himself had confess'd, that he could not know a Woman, and that, before divers*

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*Noblemen, and some of them his own Friends, naming, as I remember, the Earls of Northampton and Worcester, and the Lord Knowles. All this while I never dream'd of impotentia versus hanc, but conceiv'd, that they would charge the Earl simply with Disability. The Lord Chamberlain then seem'd unto me sully resolv'd to proceed, and told me whom he would have in the Commission, The Bishops of London, Ely, and Litchfield, the two Chancellors of the Exchequer and Dutchy, my Judges; (for so he call'd them) Sir Daniel Dun, Sir John Bennet, Dr. James, and Dr. Edwards. I told his Lordship, That I lik'd the Persons very well. The next News I heard, was about a Day or two after, That the Commission was out under the Great Seal; which I wonder'd at, by reason that I thought, that my Words to the Lord Chamberlain being well weigh'd, would have mov'd some longer Consideration. Well: The Commission is brought; it is accepted, and Proceeding decreed; the Earl of Essex is call'd; the Libel is put in. When we saw it, and that it contain'd *impotentia versus hanc*, most of us, who were not acquainted with the Project before, were much amaz'd at it. I told the Council for my Lady, That they had laid a very narrow Bridge for themselves to go over: So said my Lord of London, and divers of the rest; only my Lord*

And the Lady HOWARD. 5

Lord of Ely was still silent. My Lord of Litchfield, two several Times, utter'd Speeches, as much grieving and repining at this Controversy: *That he was Ordinary to the Earl of Essex, and had been in his House at Chartely, which he saw to be well govern'd; and the Earl did bear himself most religiously therein, to his great Comfort: That his Wife had the Honour to be Cousin Germain to the Countess of Suffolk; and therefore he had no Reason but to wish well to the Earl of Essex and his Lady both.* Yet if he had been worthy to be consulted withal, he should have thought that seven Years had been little enough to have deliberated, whether it were fit to bring such a Business into Question before the World. Another time he told us, *That it was very good, that we should proceed with great Wariness in this Cause; for, saith he, the World looketh on us what we do; and there were not more Eyes upon the Earl's Father losing his Head, than there be upon the Earl now losing his Wife.* He told me afterwards, *That he had ill Will for those Speeches, and complain'd that some among us did tell Tales of all that was said and done.* (And so it appear'd afterwards, that Sir F. Caesar, and Sir Daniel Dun did.) Sir Thomas Parry, in all his Speeches, privately murmur'd against this Nullity, till he came to Windsor; where, the Day that the King heard us, the Lord Chamberlain, in my Presence, spake privately with him

6 *The CASE of the E. of ESSEX,*

and Sir *Julius Caesar* about this Matter; and from that Time forward, Mr. Chancellor of the *Dutchy* was alter'd. My Lord of *Ely*, also, for a great while, was in Dislike of the Separation, (as I have credibly heard he open'd himself to Sir *Henry Savile*) until such Time as the King spake with him, and then his Judgment was reform'd. But Truth it is, that among us he said nothing.

Now the Earl's Answer is taken, which appeareth. In it there were divers Things very observable. He us'd no ill Speech of his Lady, for which we all much commended him. I gave him so strict a Charge to speak the Truth, requiring him, as he would answer me before God at the last Day, to deliver nothing for Favour or Affection, but to inform us in the Verity, that it wrung from him something which I suppos'd he intended not to speak so plainly. He gave the Reason of his having no Motions to know his Lady carnally, and of his thinking that he never should. *When I came out of France I lov'd her; I do not so now, neither ever shall I.* When he was to answer to the Article, that she was *Virgo incorrupta*; he smil'd, and said, *She saith so, and she is so for me.* Sir *Daniel Dun* catch'd these Words, and bid the Register set down then, *credit articulum esse verum.* These Things gave me no great Encouragement

to

And the Lady HOWARD. 7

to the Business; but yet being at very little Leisure, I let Matters go on, and in mine own Part resolv'd nothing. Then the Witnessses were depos'd, but not publish'd. The Inspectresses were chosen, who came most unwillingly unto it, and howsoever Sir *Julius Caesar*, and Sir *Daniel Dun*, (whom we never suspected to be as Parties in the Cause, as afterwards they appear'd to be) made all clear and fair Weather; yet my Lord of *London* told us openly, *That he being with them, found that the Ladies knew not well what to make of it; that they had no Skill, nor knew not what was the Truth; but what they said, was upon the Credit of the Midwives, which were but two, and I knew not how tamper'd with.* Then came the Lady *Frances*, to take her Oath, with the seven Compurgators. I noted therein some Things. A Paper was brought, containing *Verbis præcis*, what her Ladyship would swear. We saw it, and consider'd it, and found it too bare and slight to enforce any thing. The Commissioners advis'd, that it should be more full. Dr. *Steward* accordingly drew it; but he must go forth to the Lady, to know whether she would swear it. At last it was agreed unto. When she came to subscribe it, after the Oath taken, one or two of her Brothers standing at her Back, put her in Mind, that she must not write her Name *Frances*.

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Essex, which she most willingly remember'd, and subscrib'd *Francis Howard*. We saw my Lord of *Litchfield's* Wife to be one of the seven. We were afterwards inform'd very credibly, That the Lady *Knevet* had declar'd her Sorrow, that she was us'd in such an Action, and said, *That she wept all the Day about it.* These Things pleas'd me little, that Nobody took Comfort in the Business.

Things go on in a Course till *Midsummer-Day*. Then did the King deal with me privately, as if he had receiv'd divers Complaints against me. The first was, *That we delay'd the Proceeding, in as much as the Meeting was put off, from the 18th of June, 'till the 2d or 3d of July.* My Answer was, *We had rather gone too fast: We had sate Forenoon and Afternoon: The Term now grew to an End, and we had many Businesses to dispatch of the King's: That the Commission-Day for Causes Ecclesiastical was put off for a Week, by Reason of Midsummer-Day falling on a Thursday; and consequently, that our Proceeding in this Cause, which commonly attended the other Commission, was of Necessity to be defer'd.* But my principal Answer was, *That we could not shorten it; for the Council on both Parts, had agreed upon that Day in July, and so it was upon the Acts: Howsoever, therefore, the Council for my Lady mov'd openly in Court to abreviate the Time,*
yet

And the Lady HOWARD. 9

yet the Council for my Lord would not renounce nor alter their Term probatory, but kept them close unto it. Another Objection was, That I acquainted not the King, from Time to Time, how Matters did go. I answer'd, That I knew not my self; for as yet there was no Publication of Witnesses. When any thing came to my Knowledge, his Majesty should understand it. It was added, That divers Persons repair'd unto me, who wish'd not well to the Business. Belike, said I, they mean the Earl of Southampton, who came in the other Day, when we were all sitting together. But his Coming was about John Cotton's Cause; and I never had a Word with him in all my life, touching this Business. No, said the King, and smil'd, it is Sir Henry Nevile. Indeed, quoth I, he was with me the other Day, and this very Morning: But your Majesty well knows what was the Reason. It was touching that Cause, which your Majesty commanded me to send for him about. I deliver'd him your Mind the one Day, and he gave me an Answer the other. At this time, his Majesty cast out some Words, as if he wish'd well to the Nullity; but it was so obscurely, that I did not conceive that earnestly he desir'd it. After this Day, the Complaints were many, which were made to the King against me, and many Threats were us'd, and divers Tricks were play'd, to urge me to yield to the Nullity. One was, That I shou'd suffer

10 *The CASE of the E. of ESSEX,*
the Earl of Essex to go out of Town. I an-
swer'd, He had made his Answer, and had his
Proctor, and it was our Custom then not to stay
Men. His Majesty commanded me to en-
quire, if his Presence were not necessary ;
and if it were, then I should stay him. I
sent to Sir *Daniel Dun*, to Sir *John Bennet*,
and to Dr. *Steward* ; and they all agreed,
that there was no need of his Lordship's be-
ing in Town. And of this I sent Word to
the Lord Chamberlain, and my Lord of
Essex was permitted to depart. One while
it was given out, that I was mov'd by the
Queen to cross them ; when, in Truth, I had
not spoke with her thereabout : Another
while, that I had spoke which the Earl of *Es-*
sex at first, and hence his Lordship grew less
pliable ; when they knew about what it
was, and were told of it before. And it
was not forgotten, that when I gave Charge
to the Earl of *Essex*, to answer truly to the
Positions in the Libel, I nam'd the Case of
my Lord of *Devonshire* and the Lady *Rich*,
as if I had compar'd this Cause unto theirs.
When afterwards the Earl's Council took
Exception to the Libel, it was given out,
that they were animated by me to oppose ;
whereas I never spake with them, nor
knew any thing of their Purpose. And
ever that was one, that there were Delays
m'd. Yea, it was to my Face deliver'd as
a Threat, that Arch-Bishop *Grindal* had
been

been overthrown for not giving Consent to the Divorce of Dr. *Julio*, as implying, that the same would be my Case.

About this Time, the Lords, and the rest of the Feoffees, were to meet at Mr. *Sutton's* Hospital, about the Settling of it. The Day that we were to come thither, my Lord Chamberlain in the Privy-Gallery at *White-Hall*, shew'd his Anger towards me, that we had not sent for the Keys to his Lordship, and that he might deliver over the Cause. But when I came to the *Charter-House*, there was deliver'd me a Letter, written all with my Lord's own Hand, and directed to the Lord Arch-Bishop, the Lord Chancellor, and the Lord Privy-Seal; wherein he did twice take Exception to me by Name, and, in a Sort, brav'd me, that so he might pick a Quarrel to me; whereunto I reply'd not, but bore it with Patience.

A little before *Whitsontide*, his Lordship was very kind to me, and of his own Accord proffer'd me a Chamber at *Greenwich*, which my Lord, my Predecessor, had; but after twice Proffering of it, and my Accepting of the same, his Lordship fell off strangely, and I never spake of it more. These Complaints and Threats made me to suspect all was not well; for what needed these Things to me, in a Matter of Justice?

The

12 The CASE of the E. of ESSEX,

The Time now grew on, that his Majesty was to go abroad in Progress on a *Sunday*, which was the Day before the Council for my Lord were to put in their Answers and Exceptions to the Libel. The Lord Privy Seal shew'd me a Letter of the King's to his Lordship, wherein he was to expostulate with me, for delaying the Business. I gave his Lordship Answer what was done, and he profess'd that his Lordship was satisfy'd, and that no Man could do more than I did. On the *Monday*, the Council for my Lord put in their Answer, which was round and picquant. The Lord Chamberlain had Notice of it, and complain'd thereof to the King. I sent his Majesty the Copy thereof, and receiv'd from the King a Letter, written all with his Majesty's own Hand, shewing Dislike thereof. At that Time, Sir *William Button* threaten'd Sir *Daniel's* Servant hard for that Answer, as the said Sir *Daniel* divers Weeks after told me. The Commissioners consider'd of the Answer, and disallow'd it, giving Order, that no Record should remain of it, but that it should be utterly defac'd. This was very well accepted, and now my Lord of *Canterbury* was a very honest Man. But 'till this was done, their Followers gave out, that the King had in two Letters so

so school'd the Arch-bishop, as he was never school'd in all his Life.

Things now being quiet, I call'd Sir William Button one Commission-Day unto me, and spake thus to him: Sir William Button, you have follow'd this Business from the first, and have been present at the acting of all things. Have you ever seen me, in Word or Deed, done any Matter that doth not become me? (for indeed hitherto I had no Way declar'd my self, because we were not come to consider of the Proofs.) What is then the Cause that I am thus complain'd upon, that I cannot one Day be quiet? His Answer unto me, was, That the Lord Chamberlain was every way a kind Father to his Children, but in this of his Daughter, he was so Passionate, 'till it had an end, that he lay as on a Grid-iron, broiling 'till the Matter were accomplish'd. Quoth I, It shall not be delay'd by me. Now, the Council on both Sides drew on to inform us, wherein I noted, that whereas the Libel was laid in Nature of *Maleficium versus hanc*, my Lady's Council upon the shutting up of the Cause, would not apply themselves thereunto, neither would they willingly hear of it; which seem'd strange, since all the Books which they brought, particularly to the Cause, did mention that; and Doctor Steward had publicly and expressively said, That it was that
which

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which they did mean. This troubl'd me somewhat, because I perceiv'd that they themselves could not tell what to make of it. But afterwards fell out another Matter, which very much alienated my Judgment from the Cause: It appear'd, that Sentence could not be given, 'till the Time that the King entering his Progress, was gone as far as *Windsor*, and then his Majesty was soon to depart to *Farnam*. Sir *Daniel Dun* told us, *That he was to attend the King in Progress; that he must be at Farnam; that he was Old and Lamé; that it would be too great a Trouble for him to come back again at the Day of Sentence.* He therefore pray'd, *That we would hear him deliver his Judgment of the whole Matter.* This Proffer seem'd wondrous strange to most of us, and putting it by handsomely, we resolv'd not to trouble him therewith: And in this Opinion we arose. But afterwards my Lord of *Litchfield* cometh to my Study Door, where I and my Lord of *London* were about another Business, and telleth us, *That my Lord of Ely, and Mr. Chancellor of the Exchequer, were very desirous to hear Sir Daniel speak; and that he for his Part, was of the Mind that it would do very well, and therefore he importun'd us both to give Consent unto it; we imagining no great harm could come thereby, assented, and the next*
Day

Day is appointed for that Purpose. There Sir *Daniel* cometh with a formal Declaration, divided into six Parts, to every one of which, he spake so largely, that with a little replying of ours, it spent a whole Afternoon. Matters which I most observ'd therein, were these: He told us, *That by our Commission, we might bear this Cause summarily.* He brought a Book, *That he who hath Power to bear a Matter summarily, is in Nature of an Arbitr chosen by both Parties, and therefore may judge in Discretion, as he shall think fit; and more to that Purpose.* I thought with my self, that this was strange Doctrine in a Matter of Marriage; that as Arbitrators, we might adjudge a Wife to her Husband, or not adjudge her, according to our Discretion. In his discoursing of my Lord's Impotency, *Versus banc*, he beat upon the Matter of *Maleficium*, and yet by no Means he would have it to be that apparently. He insisted much, *That the Sentence was to be given in General Terms, not naming any particular Impotency.* I told him, *In such a Sentence, the World look that we should yeild a Reason of that which we did.* He reply'd, *That it was fit to give no Reason.* And here, said Mr. Chancellor of the Exchequer, *a Judge is not to give a Reason of his Sentence, but only to God. I would give no Reason to any Prince in the World.* I was once call'd

16 *The CASE of the E. of ESSEX,*

call'd before Queen Elizabeth, about a Sentence which I gave, and she demanded of me the Reason thereof; I told her, *A Judge was bound to give no Reason of that which he pronounced, but only to God.* I marvell'd much at these Things, and at last reply'd, *Well, let it be, we acquaint not the World with the Reason of that which we do, yet it is not fit, that I who am the Judge, and must pronounce the Sentence, know the Ground of that which I am to pronounce.* Hear, after a little pausing, one of them said, *Yes, for you may see that in the Books and Depositions.* Quoth I, *But I cannot see that there which may satisfy me.* But Mr. Chancellor said, I, and Sir Daniel Dun, Commissioners, you perhaps be not driven to it, yet I shall be forc'd of Necessity to tell Men the Reason of the Sentence: For as soon as this Cause is sentenc'd, every Man who is discontented with his Wife, and every Woman discontented with her Husband, which can have any reasonable Pretence, will repair to me for such Nullities. If I yeild unto them, here will be strange Violations of Marriages; if I do not, I must not tell them, that it was fit for my Lord of Essex, but it is not so for you; for the Law knoweth no Persons, but is indifferent to all. If I then repel them, I must shew a Reason: Your Case is not like that of my Lord of Essex; for his Case was thus, yours is thus. And so must I deliver the Reason,

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And the Lady HOWARD. 17

Reason, or Men will not be answer'd. In this time of debating, I ask'd Sir Daniel Dun, I pray you Master of the Requests, what Examples have we of any Nullity in England, pronounc'd in this kind? Might a Man see any Precedent of it? For I would be loath to do a thing, that never was done before. Yes, saith he, there be Precedents thereof. In Anne of Cleve's Case, we have an Example, and another in one Berry, which I have here in my Book; and thereupon out of a Note-Book of his own, he read now a Line or two, and then two or three other Lines in another Place, and so forward. My answer was, I did not think that King Henry's Separation from Anne of Cleve, was for any such Matter, but upon a Precontract. I said, King Henry the VIIIth was a strange Prince in that kind: He put himself into many Marriages; and when he began that with Anne of Cleve, he fear'd least the Emperor, and King of France, should combine with the Pope against him, and therefore he was desirous to strengthen himself with the Protestant Princes in Germany; and for that he thought this Marriage was much behevoful. But afterwards growing into Peace, with one or both of those Princes, he grew soon weary of the Marriage, because he lik'd not the Woman. But then I promis'd to consider further of these two Cases. This was the End of that Day's

18 *The CASE of the E. of ESSEX,*

Day's Labour, which, when at Night I had recounted with my self, I thought it was an audacious Part, for such a one as Sir *Daniel* was, to teach us out of such poor Grounds, both what to do, and how to do. I found by my Observation, that it was a set Match, that thus he should be heard; that he was prepar'd for the Purpose; For no Man upon the sudden, or one Day's warning, could deliver so much, and so digested. And now I began to assure my self, that he did not shew himself a Judge, but was a Stickler for the Nullity. I much suspected the Conscience of the Man, knowing him reasonably well before, both out of mine own Estimation of him, and out of the Judgment of my two Predecessors, the Lords *Whitgift* and *Bancroft*, who held him for a Man most corrupt. Yet the next Day I sent unto him for his Note-Book, and I caused the Record of *Anne of Cleve*, to be brought unto me. Reading over all the latter, I found not one Word tending to the present Case. *Good Lord! thought I, how doth this Man deceive me!* Perusing his own Book for that of *Berry*, I found it to be nothing but the Pleadings of Advocates on both Sides, when about the 40 of *Eliz.* there was some Question in the Common Law Courts, about *Berry's* Land, *Berry* himself being dead many

Years

And the Lady HOWARD. 19

Years before. But I saw more in this Book against the Cause now in hand, than for it; and by some other Writings in my House, I discover'd that *Berry's* Divorce, *Anno* 1561, was for want of his Stones, which *Dr. Steward* also, being now of Council for my Lady, and who formerly stood for *Berry's* Brother against the suppos'd Son, publicly acknowledg'd. These Things made me in my heart much dislike the Cause, and procur'd in me a hard Opinion, touching *Sir Daniel Dun*, who should not have wrong'd me, being my Officer, as Dean of the *Arches*.

Within few Days after, the Message cometh to us, that we were all to attend the King at *Windsor*. This accordingly was done. The Morning before the Hearing, the Lord Chamberlain in my Presence spoke first earnestly with the Chancellor of the Exchequer, and afterward with the Chancellor of the Dutchy, who that Day fell from us, as appear'd by the few Words that he had before the King. Some few Days before that, had *Sir John Bennet*, by *Sir William Button*, and *Dr. Edwards*, been otherwise dealt withal, earnestly to give Consent to the Nullity; but that Day we dealt in it more than three Hours. His Majesty propounding the Matter, ask'd, *How things did stand?* *Sir Julius*

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lius Caesar said, That Sir Daniel Dun was best able to speak unto it. And then, ex composito, Sir Daniel begins, and tells a great Tale, and especially insisteth upon Non potuit. When he had done, I answer'd him, and shew'd the want of Ground for that Conclusion, out of other the Earl's evident Answers, That the Non potuit was for lack of Love, and not for want of Ability. I challeng'd Sir Daniel, for abusing the King with a false Report, and especially for his two Precedents of Berry's Case, and that of Anne of Cleve. Amongst us, was divers ways shew'd the Insufficiency of the Proofs; that the Libel was laid short to the Cause, and the Proofs were short of the Libel; That we had very many Times call'd upon the Council for my Lady, that they should look that they rightly laid their Matter, and made their Proof strong; that in the End, they complain'd not of the Judges, when the Fault was in themselves: (Where my Lord of Litchfield added, That himself fearing the worst, had gone to the Doctors-Commons, and warn'd the Council for my Lady, that they should look to it.) Among other Things there utter'd, Sir Daniel Dun said, What a Disgrace will this be to my Lord Chamberlain and his Daughter, if it should not now go forward; My Answer was, They should have look'd to that before they did

And the Lady HOWARD. 21

did begin it : We were not the Men that set the Matter on Foot ; if it were a Disgrace, they put it on themselves. But, quoth I, must I, to save any Man from Disgrace, send my Soul unto Hell, to give a Sentence whereof I saw no Ground ? I will never do it. My Lord of London, Sir John Bennet, and Dr. Edwards, did carry themselves well that Day, altho' Sir John Bennet had much Opposition from the King himself. When we saw the King earnest, I fell down on my Knee, and with Tears in mine Eyes, I said, I beseech your Majesty, if ever I have done you any Service, whom I do serve with a faithful Heart, or may do you any Service, rid me of this Business. I had said before, That I was the unfittest Man that might be, to judge of such a Cause ; I was no marry'd Man, I was no Lawyer, and I had not had the Time, by reason of my infinite Businesses, to read so much of that Matter, as other Men had. I observ'd that Day, many Things in his Majesty's Carriage of the Matter : He was Earnest, but Gracious and Moderate. He found Fault with the Libel, and said, That Complaints were made, that we went too slow, but he perceiv'd we went too fast. He marvell'd that my Lord of Worcester, and the Lord Knowles were not examin'd as Witnesses. He constantly profess'd, That he believ'd that my Lord of Essex, was impotent for a Woman.
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22 *The CASE of the E. of ESSEX,*

He told us, That some of the Earl's Friends had put a Woman to him, and he would not touch her. His Majesty said, That the Earl was once purpos'd to have gone to Poland, to have try'd whither he might be unwitched. To which Things my Reply was, I would to God we might see these Things legally prov'd. That his Majesty much dislike'd that Course, and therefore he set the Course now in Prosecution; and therefore if there were any Error in it, he had done the Lord Chamberlain wrong, and he must take it upon him. In sum, I found his Majesty much troubled what to do, as I gather'd, especially by these Words, If my Lord of Canterbury, and my Lord of London, have a Negative Voice, we must either begin all again, and have a new Libel, or we must have a new Commission, and put other Adjuncts. The Conclusion from his Majesty was, That we should all meet at Lambeth on the Morrow, and if we could unanimously consent, then go to the Sentence; if not, we should put it off unto another Day, and certify him of it, and so farther understand his Pleasure. When the King was risen from his Chair, he fell to inveighing against these Marryings of young Couples, before they be acquainted one with another. He told us the Inconvenience of it, how he knew in Scotland, a Father who marry'd his only Child

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Child to a Man against her Will: That she withstood it; yet her Father forc'd her to marry him: That being gone Home with her Husband, after a very few Days she came run away from him: That her Father jerk'd her, and sent her home again: That not long after, she poyson'd her Husband, and was burnt for it, while the King was in *Scotland*. After his Majesty's going out, I follow'd him, and told him, I evidently perceiv'd, that it was in the Earl of *Essex*, *Vitium Animi non Corporis*. His Majesty swore he thought so. There pass'd some other Speech from the King to me, touching his own Lying with the Queen the first Night that he marry'd her. But at the last, I kiss'd his Hand and departed. After I was gone, the Lord Chamberlain speaking somewhat against me, the King reply'd, *The Arch-bishop hath so adjur'd me to be rid of this Matter, that I cannot tell what to say to him*. This did Sir *Julius Caesar* tell me that Day at Dinner, at *Eaton College*, letting me know, that the King found no fault with me. But afterward, the King coming to Dinner, after his Meat had stay'd for him on the Table more than a Quarter of an Hour, he sate him down in his Chair, and casting his Leg over one Side of it, he eat no Meat for a great Space of Time, neither said he any Word, but sate musing to himself; which

24 *The CASE of the E. of ESSEX,*

which every Man observ'd. And it was given out by some in the Court, that I was gone away in the King's Displeasure. Within some few Days after, it was also more Ways than one brought credibly to my Ears, That the Arch-bishop and my Lord of *London*, should be hereafter kept to their Spiritualities, and should meddle no more in temporal Matters: And within a while it came so far, as that they should have their Temporalities taken from them. Sir *John Bennet* was at *Windsor* mov'd by Sir *Thomas Lake* in the Lord *Fenton's* Name, and afterwards by the Lord *Fenton* himself, That he should alter his Opinion, and make his Peace with the King, for his Majesty was not well pleas'd with him.

As I came Homeward from *Windsor* in my Coach, and all that same Night, two Things did run much in my Mind; the one of them was, What a strange and fearful Thing it was, That his Majesty should be so far engag'd in that Business: That he should profess, that himself had set the Matter in that Course of Judgment: That the Judges should be dealt withal before, and, in a Sort, directed what they should determine: That the like Example had not been seen: That his Majesty did win himself much Honour in the Case of *Sutton's* Hospital, that notwithstanding all Importunity, he had suffer'd the Judges to do

do their Conscience. This strange moving to the contrary, did make me marvelously suspect, that it was no direct Matter; and, as a dutiful Servant to my most gracious Master, I wish'd in my Heart, that his Majesty's Hand might be taken off the Business. The other Point was, That we had all this while, in our Debatings, never, or very little, meddled with Points of Divinity. And I thought with my self, that much might be said therein, against *maleficium*, and the Nullity to be pronounc'd thereupon *versus hanc*; for out of this we could never get in all our Talking, though they would never cleave fast to it. I therefore, having formerly revolv'd some such Things in my Mind, rose early on the Day that we were to debate Things at large, and set down my Mind in writing out of something in Divinity. The Copy of this appeareth. The Day after we came from *Windsor* being *Tuesday* we met, and all the Forenoon we insisted on that which I had briefly written: But to deliver my Conscience freely before God, I receiv'd no kind or shew of Satisfaction. My Lord of *Ely* sat little less than Dumb, as if he had never dream'd of any such Matter. Divers of the Commissioners wonder'd at him, that he, who had spent so much Time in reading of the Canonists touching this Question, should not think upon Divinity.

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26 *The CASE of the E. of ESSEX,*

nity. Briefly up and down by others somewhat was said, but nothing to Contentment. After Dinner, Sir *John Bennet* propounded Reasons out of the Law, but without any Satisfaction. I observ'd two special Points that Afternoon: The one was, That we all thought my Lord of *Essex* his Answer to the Libel, was neither plain nor sufficient. And now it was remember'd that my Lord of *Litchfield* had put to him certain Questions, that four Things were necessary to Generation; *Membrum virile*, Erection, Penetration, and *Ejaculatio Seminis*; which, altho' they were then smil'd at, and since that Time much Sport had been made at the Court and in *London* about them; yet now our marry'd Men on all Hands wish'd that punctually his Lordship might have been held to give his Answer unto them. This instructed me, that the Proofs were nor full. A second Thing was, that when towards the Evening, I wish'd that a Reconciliation might be labour'd between my Lord and my Lady, that it should best become us, my Lord of *Ely*, who from the first Beginning of the Process, had been always very silent, spake home about that, much disliking that any such Thing should now be sought; that it was too late; that it might be the Cause of poysoning and destroying one of another, to bring them together again.

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Well, when we could not agree upon our Conclusion, we were inforc'd to put all off unto a longer Day; and as the King commanded, I was to certify his Majesty of it. I wrote a Letter to the King, praying humbly that I might be freed from the Trouble of this Cause, or, at least, give no Sentence in it, 'till I were a marry'd Man, and so might better understand the Business. I inclos'd also six Reasons of Sir *John Bennet's* taking Exceptions in Law against the Nullity. And withal I joyn'd mine own Reasons in Divinity, of which I said in my Letter, that I knew not where to seek an Answer to them; meaning, that the Commissioners had given me none. These Reasons afterwards cost me a great deal of Trouble.

The next Progress in this Controversy, was, that I was advertis'd, that it was his Majesty's Pleasure that the Cause should be put off until the 18th of *September*; and withal there was brought a new Commission of Adjuncts, whereinto my Lords of *Winchester* and *Rochester* were put. The Day that I perceiv'd this, acquainting the two Chancellors of the Exchequer and Dutchy therewith, in the Gallery at *Lambeth*, I told them, *That I hoped now, that for my Part, I should be freed from any Trouble therein farther, for I did desire to be rid of it.* They both answer'd me, *That they desir'd in*

28 *The* CASE of the E. of ESSEX,

like fort to be quit of the Matter. A good Business, thought I, that no Body taketh Comfort of it, unless it be Sir Daniel Dun, of whom I forgot before to note, that on the Day of meeting, next after our coming from *Windsor*, he, with a great deal of Insolency, challeng'd me for my Speech before his Majesty, the Day before. Do not abuse the King, Sir Daniel Dun. I remember'd it was in mine own House, and if I had rattl'd him according to his Deserts, my Lord Chamberlain would have said it had been done for his Sake; and in the Progress, Sir Daniel having the King's Ear, would have made Things worse than they were; and I therefore forbore him with such Patience, that some of the Commissioners told me afterwards, that they wonder'd how I could endure those Behaviours, at the Hands of a Man of his Quality: But yet they commended me for it. Now grew I to consider what were the Reasons why these two Commissioners were joined to us; and therein I had many Advertisements from divers Friends, divers Ways. We resolv'd for my Lord of *Winton*; that it was suppos'd, that there was no great Amity between him and me; that when I was Dean there, there was some Disagreement between us, which they suppos'd yet continu'd: That he had an old Grudge to me, for having the Archbishoprick, which his Lordship

Lordship so much desir'd. Besides, it was some Tickling unto him, that his Gravity and Learning should either win in the Arch-bishop, or lay some Blemish upon him, if he stood out. Certain it is, that Sir *William Button* was with him; and, doubtless, would tell him how acceptable this Service would be to his Majesty. I heard of good Credit, and secretly, That he was put in hope to be made a Privy Counsellor; and the Fame was general, That for the Father's Labour, the Son should be made a Knight. It seemeth at the first, that he had no great Fancy unto it; but being wrought upon, he consented; so that he might be required by his Majesty to be present. This was done by a Letter from *Salisbury*, which, at his being at *Lambeth*, he shew'd me; that I should take Notice, that he had not come, unless he had been commanded. I leave him for the Time, only signifying, that in the Vacation, he sent for divers Books from *London*, and had Dr. *Steward* much with him, to inform him in all Particulars. Yet I may not forget, that while he held off his Consent, some hard Opinions were rais'd of him at Court; as I found by a Letter from my Lord of *Litchfield* to me. For there he was found Fault with, that he attended not the King at *Farnham*, or at *Andover*. And there Blame was laid, that Mr. *Love*, who was

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so great with my Lord of *Winton*, was like to get the Warden's Place at *Winchester*, Dr. *Harmer* being reported to be dead. Concerning the Bishop of *Rochester*, it was well known that he had open'd himself before the King's going in Progress, that he lik'd well of the Nullity. Coming once or twice while we were about it, he, with some in my House, disputed earnestly for it. He was a great Dependant of my Lord of *Litchfield*. This was a Way to make him well esteem'd, and to arise high in Preference. But, in Truth, he should not have verifi'd the Report which Arch-bishop *Bancroft* on his Death-Bed gave of him, together with *Butler* and *Carrier*, to the King by a Message, unless he did some such Thing. When he was put into the Commission, he in divers Places seem'd to be much offended, that he was made one. His Grief was, that he was set in Opposition against me: He would never give his Voice to it, unless I consented. These, and the like Things, he spake, as elsewhere, so to some of my Servants in my House at *Croydon*: For, under another Colour, he came three Times in the Vacation to me; but I never spake a Word with him about that Matter, as knowing it would be an Argument against me, that I labour'd to draw away the King's Commissioners; and the End shew'd, that I had no great Reason

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son to trust him. Besides these two Adjuncts, the new Commission it self seem'd very strange unto me. There were eight made of the *Quorum*; and it was so laid, that if three of them, with two other, consented, the Sentence might be given; so that, by the Words thereof, if seven had deny'd, five might have pronounc'd and prevail'd. A Matter so uncooth, that, as I credibly heard, my Lord of *Winton* himself found much Fault therewith. Again, there was a Clause, *Legibus, Statutis, Ordinationibus, Constitutionibus quibuscunque non obstantibus*; so resolv'd they were to have it dispatch'd. Every thing now stood at a Pause; and my Lord of *Ely* (who, at first, deliver'd his Judgment against it to Sir *Henry Savile*, as I heard it avow'd upon good Credit; but afterwards said, he was better instructed by the King) began to hearken what Men said of the Matter, as appeared by Speech which he had with Sir *John Paiton*; to whom, notwithstanding, he told some Things of the Insufficiency of my Lord of *Essex*. The Weather grew fair; he hop'd the overflowing of the Isle of *Ely* would cease; he would go down in his Visitation; he came and took his leave of me, but not one Word of the Nullity.

Now was his Majesty abroad, and I had more Leisure to consider of this Question.

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I read what I could ; I conferr'd with many Men about divers Circumstances, so to inform my self the better. I pray'd frequently to God to direct me aright. I often perus'd the Depositions, but I found little Satisfaction. I perceiv'd most of the Lords had a great Dislike of this Proceeding ; that the better Sort of Men had generally a Detestation of it ; that the Judges and Lawyers much condemned it. I heard many strange Stories of the Lady's Carriage. Something was freely spoken of a Woman arraign'd at *Bury* ; and how to shut that up, and so to free the Earl, this Course was consented upon.

These Things, though out of Charity I entertain'd not as absolutely true, yet the Concurrence of them from so many, made me that I could not condemn them. Besides, now grew the Rumour strong, that a new Husband was readily provided for her : Whereof I call'd to Mind the Opinion of Sir *Henry Nevile*, deliver'd to me at *Windsor* ; and I did not forget a Speech of *Overbury's*, once to me in that Kind. I understood, that at *Christmas* last, there was a Reconciliation wrought between the Earl and his Lady, howsoever it fell out. Yea, that when the Lords met at *White-Hall* about the manner of Separation, there was three Times that Day a Likelihood to make them Friends ; which we

thought

And the Lady HOWARD. 33

thought imply'd no Disability of my Lord of *Essex*, even in their own Opinion. I farther understood, that whereas it was whisper'd among us, the Commissioners, That at *Christmas* last, my Lord of *Essex* being in Bed with his Lady, should labour a quarter of an Hour carnally to know her, and in the End should say, Frankey, *it will not be*, and so kiss'd her, and bid her good Night : That this was not true ; but that the Earl, the Night before his going from London, at the End of *Trinity* Term, said with Tears in his Eyes, *That when he went to Bed to her at Christmas last, he had forgiven all Things as clearly as he wish'd that God should forgive him his Sins ; but when they were alone, she revil'd him, and miscall'd him, terming him Cow, and Coward, and Beast : And he added, that she was as bitter a Woman as any was in the World : Which Things so cool'd his Courage, that he was far from knowing, or endeavouring to know her.* These Matters, together with the small Joy which the Commissioners had to deal in the Business, made me have no great Fancy unto it. On the other Side, I heard that my Lord Chamberlain, or his Followers, gave out, that what was done, was perform'd by the King's Direction, otherwise it had not been begun ; and therefore, they expected that his Majesty should see it effected ; that they rested

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themselves on him. I was much griev'd that they had this Advantage on my Master; who being so engag'd, as I thought, could not well go backward or forward: And, to increase my Sorrow, I was privately advertis'd from Court, that his Majesty did mean himself to give an Answer to my Reasons above-mention'd. I heard another Way, that his Majesty in the Progress wrote much with his own Hands. From another Friend I was told, That the King with his Answer to the Reasons, had written to me a sharp Letter. Yea, by another Hearn'd the Contents of the Letter, which was full of Sharpness.

These Things in the Summer kept me full of Expectation of some great Discontentment. Yet my Heart still assur'd me, that I was guilty of no Wickedness. I found all Persons with whom I spake, of my Mind, for the Dislike of the Nullity. In many Businessses to and from the King by Letters, I found nothing but well. His Majesty sent me Warrants for three Bucks, as formerly he had done, and with some Kindness joyn'd.

Thus I was tossed in my Thoughts; and in all my Troubles, I had Recourse to God in Prayer.

By this Time, the 18th of September draweth nigh, and I am inform'd, That my Lord of Winchester, the Tuesday before, was
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come to Town ; and that besides my Lady's Council, Sir *Julius Caesar*, and Sir *Daniel Dun*, did, at *St. Mary Overy's House*, daily attend his Lordship. I expected no great Good of this ; only from the King I heard nothing but well. For some few Days before, his Majesty had been at *White-Hall*, where I kiss'd his Hand, and he did not only look merrily upon me, but he gave me Promise of the Bishoprick of *Lincoln*, for my Brother, as I understood it. Some other Matters also pass'd quietly in Speech, and I found no Disturbance. But on the 17th of *Septemb.* the Day before our new meeting at *Lambeth*, my Lord of *Litchfield* being sent from the King, bringeth divers Papers unto me, seal'd up. I open'd them, and found there my Reasons first ; secondly, an Answer to them ; and, thirdly, a Letter, all written with the King's Hand unto me. I read them all presently, without any abatement, whereunto I was help'd by my Fore-knowledge, that such things would come. I said little unto it, only I ask'd my Lord of *Litchfield*, *Whether he knew what those Papers contain'd?* He told me, *That the King had read unto him the Answers to the Reasons, and had given him the Letter to Seal up in a Paper ; but in Reverence to his Majesty, he held it not his Duty to look into it.* Growing afterward in some Speech of our next Days Business, I told him plainly,
That

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That having spent much Time in this Vacation, in perusing the Books, I could not find any where, but especially in the Answer of my Lord of Essex, that which would give me Contentment. I read the Places, and my Lord confess'd with me, That there was not enough. He told me also, That unless I gave my Consent to the Separation, that he would never give his : So much Reverence in him did I find both then, and divers Times before, against this Divorcement. At last he mention'd one Thing which pleas'd me wondrous well, and that was, That we should call for my Lord of Essex again, and new examine him, upon some Points to be farther declar'd, *ad informandum animum Judicis*. For hence, either we should know so much as might perswade us to decree a Separation, or the World might be satisfy'd that we had no Reason for it. These Things thus settled, his Lordship separateth. Then I withdrew my self to my Study, and read over again and again, the Papers from the King. I found them very sharp, and perceiv'd by the Time that they arriv'd unto me, that they were detain'd 'till that Day, that I might be overwhelm'd with them on the sudden, and have no Time to deliberate, before we were to come the second Time to sit in Judgment. These things did much trouble me, so that I did sleep but a little that Night. I revolv-

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ved many things, and much tumbling I had in my Mind. It griev'd me infinitely, that the King should make himself a Party therein; That some Unthankfulness, and other Matters, were little less than Reproaches unto me: Methought my faithful Heart to my Master, deserv'd no such Sharpness. I devis'd how I might give the King Contentment, and it was some Comfort to me, that we thought upon a Course of new examining my Lord of *Essex*. But as things stood, I could not force my Conscience, which cry'd upon me, *That it was an odious Thing to GOD and Men, to give such a Sentence, without better warrant.* I here cast what might befall to the Church in my Disgrace; how *Papists* would scorn at it; how it might be my own Ruin, and that divers ways; a Hazard to my Friends, and to the Commissioners which were of my Mind; how my Lord of *London*, had a Wife and Children, which might all be overthrown at one Blow. But after Midnight sleeping, towards the Morning, I consider'd on the other Side, That my Conscience was more unto me than all the World; that it was a fearful thing, in Place of Judgment, to give a Sentence against mine own Heart; That *Olivarius*, the Chancellor of *France*, upon such an Occasion, grew Mad, and dy'd in it: That the Manner of our Sentence,

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tence, must be *Solum Deum pra Oculis habentes, & rei veritate inspecta*; all which, and the like Meditations, did much preponderate with me. Then I slept again, and now rising, I found my Heart much settled, to persist in that which I held to be Truth. I pour'd out earnestly my Prayers to God, and was now strongly resolv'd, to leave all to God, remembering, That he had preserv'd me from my Mother's Womb; that he had from Time to Time rid me out of all my Troubles; that his Power was the same still; that he would never forsake me, if I turn'd not from him. I forgot not, *That the Hearts of Kings were in the Hand of the Lord*; that I had Experience of the Graciousness, both of GOD and the King, the Year before; when standing earnestly in a good Cause, that Prince Henry should not marry a Papist, I receiv'd some sharp Words from the King for my Labour; but the next Day his Majesty us'd me very kindly again. To this I added, That Poverty, Imprisonment, Death it self, were things contemptible to a resolv'd Mind: That some of my Predecessors, as Arch-Bishop Cranmer, and my Lord Grindal, had given good Examples of these Sufferings, and they were recorded in the Catalogue of the Righteous. These Thoughts thus resolv'd, I read again the Letter from the King,

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King, and drawing out into a Paper, all the sharp Words, I consider'd them again and again, and methought they were not altogether so bitter as I apprehended them; that they were wrung from his Majesty by my Lord Chamberlain's Importunity; that my Master had deserv'd at my Hands, that I should bear patiently twenty times more; and that all was nothing, so the Clearness of my Conscience might be preserv'd. With these Resolutions on the Saturday, I came to Lambeth, where I met with the News of Overbury's Death, and the Sound of some fearful Apprehensions thereupon, bruted about the City. I made Trial of my Lord of London's Constancy, telling him, *aut cidendum, aut cadendum*. I found him most resolv'd, avowing unto me, *That if he should pronounce for the Dissolution of the Marriage, he thought the Devil would that Night fetch away his Soul*. Yea, he was earnest on me, to persist where I began, telling me, *That the Eyes of the whole Church of England were upon me, and expected of me, that I should shew my Self a worthy Man*. At last we came to sit, where my Lords of Winchester and Worcester, took their Places. The Commission was read, the Fact, and Manner of the Process was open'd, and nothing notable done, saving that my Lord of London, proposing, that it was fit that my Lord of

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Essex should be call'd to explain himself farther, for the fishing out of the Truth, all the Commissioners most willingly assented thereunto, (yea, my Lords of *Winchester* and *Worcester* expressly,) saving Sir *Julius Caesar*, who softly declar'd his Dislike thereof, in my hearing. When the Court was risen, I spake with my Lord of *Litchfield*, and not thinking fit to return any thing to the King in Writing, I pray'd him to acquaint his Majesty how Things stood; and to tell him, that upon this Course of new calling my Lord of *Essex*, I hop'd in the End, we should give his Majesty Satisfaction. The *Sunday* I spent at *Croydon*, and preach'd on that Text of Christ's raising the Widow's Son of *Naim*, to the great Comfort of mine own Heart. That Day I conferr'd with a Friend, and settled some Courses, if any Trouble should befall unto me. I was also by a good Friend inform'd, that my Lord of *Essex*, on that *Sunday* Morning, having five or six Captains, and Gentlemen of Worth in his Chamber, and Speech being made of his Inability, rose out of his Bed, and taking up his Shirt, did shew to them all, so able, and extraordinarily sufficient Matter, that they all cry'd out Shame of his Lady, and said, That if the Ladies of the Court knew as much as they knew, they would tread her to Death.

On

And the Lady HOWARD. 41

On the *Monday* we met at *Lambeth* again, and Information was given on the Part of my Lady. These things pass'd quietly. When the Court was risen, my Lord of *Litchfield* told me, That he had made his Majesty acquainted with our Proposition on *Saturday*, but that his Majesty was strongly against it, my Lord of *Essex* should any more be call'd, and that by no means he would endure it, for that peradventure, the said Earl, either being provok'd by the late Challenge between him and Mr. *Henry Howard*, or otherwise instigated by the Earl of *Southampton*, might speak somewhat which might marr the Business. This made me still suspect, that all was not right, and I reply'd to my Lord, *If that be deny'd us, and we have no farther Proof, I shall never give Sentence for the Nullity: As good declare my Mind at first, as at last, and I pray you so acquaint his Majesty.* When I went Homeward, I much revolv'd this in my Heart, thinking, Good Lord! What a Case is this? Shall any Truth be kept from us? Are they afraid to have all out? Do they only look to attain their own Ends, and care not how our Consciences be intangled and ensnar'd? On the *Wednesday* we met again, and now Dr. *James* is come to us, and by and by cometh in my Lord of *Ely*, who, as it seem'd, had meant to have kept him away, but

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but the King sent an expresse Messenger for him, requiring him by a Letter, to be there on the *Tuesday* Night. Now are we *plena Curia*. Before we sate down, Sir *Thomas Lake* delivereth a Message unto me from the King, That his Majesty desir'd a speedy End of this Business; that it had hung long, and the World was in expectation of it; that the Term grew on, which would be full of Businessses: That his Majesty on *Monday*, was to go to *Windsor*, to meet the Queen, and my Lord *Chamberlain* with him; that therefore he would have us to fall close to our Work, not to trouble our selves on the Morrow, to come see the King, who would come late to *White-Hall*, because some Ceremonies were to be perform'd, as upon the last Day of Hunting; that we should not attend his Majesty 'till *Friday*, but that the Sentence must be given on *Saturday*. My Answer was publickly, *That there should be no Stay in me, and that therefore on the Morrow, we would sit Forenoon and Afternoon, if the Commissioners so pleas'd; and if they thought good, I would not refuse to sit until Midnight.* But in mine own Heart I perceiv'd, that all the Care was, that the Matter might be dispatch'd before the Queen spake with the King, whom they suppos'd not to wish well to the Business. We go to our Court, and Sir *Thomas Lake* stay'd to hear the Information.

Information on my Lord's Part. It was strange, to see how my Lord of *Winchester* carry'd himself that Day, partly to play his Prizes before Sir *Thomas Lake*, who might make Report of it to his Fame, and partly to shew his Ludi-magisterial Disposition. He snapp'd up my Lord's Council, that they could not speak a Word, but he catch'd it before it was out. I know what you will say, when indeed he knew not, neither was it any such Matter as he imagin'd. God Almighty will tell you a Tale for that; I tell you, *Doctor Bennet*, I have as much Law as you, I am as good a Lawyer as you are. He fell divers Times on my Lord of *London* Personally, and would needs know of him openly, *How many times in a Year, a Man was bound Carnally to know his Wife.* In a Word, with Scoffs, and imperious Behaviour, he play'd the Advocate all that Day, to the great Offence of the Standers by, so that it was publickly spoke of in *London*, which, I think, came to his Ears; so that ever afterward, he carry'd himself more tractable. I was forc'd to bear it, because of avoiding new Complaints.

The Point most observable that Day, was, that both my Lord of *Winchester*, and my Lord of *Ely*, did deny Maleficiation, so that by no Means they would have this Question to proceed in that Nature,

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ture, which I openly did thank them for and bound it upon, before all the Commissioners and Standers by, telling them, *That the same was my Opinion.* But I ask'd my Lord of Winchester, who sat by me, *What he then held it to be.* He told me privately, *That he held it to be a Natural Impotency, which was before the Marriage.* I ask'd him, *What that might be, and whence he gather'd it.* He answer'd, *I have heard divers Particulars, which are enough to perswade me if they be True.* Yea, my Lord, said I, *if they be True, I have heard as many to the contrary.* I wish that we might examine whether they be True or no; that were fair Proceeding. It is my Grief, that it is not permitted unto us, to try whether all these Matters be so or not. This might satisfy a Man's Conscience. So we parted that Night.

On the Thursday, at Ten of the Clock, we met in Lambeth-Hall, where my Lady's Council took on them, to answer some Scruples objected by Dr. Ferrand. But Dr. Martin, when no Body spake of it, fell to wipe away that Objection, that my Lord had not sworn, *Cum Septima manu.* Upon his Speech, the Commissioners took hold of it, and it then being urg'd strongly, my Lady's Council stood at first, as if they had been blasted with Lightning. Afterward they grew extream angry with Dr. Martin, that he had propos'd it, but the

for the Issue was, there could no Answer be
mis- given unto it; but in the Sight of all
that the Standers by, this was broke off with
my Shame and Confusion of Faces. We din'd
not that day, but about one or two of the
Clock, we withdrew our selves privately
into the Parlour. I had thought there to
have had Dr. *Edwards*, and the rest who
lik'd not of the Nullity, to propound their
Doubts, and so in Order; and last of all,
I would have spoken. But there I found
a contrary Course resolv'd, which my Lord
of *Winchester* seem'd much to dislike. But
my Lord of *Litchfield*, Sir *Julius Caesar*, and
Sir *Daniel Dun*, had set the Clock, and they
must have their Will. The six Reasons are
produc'd, which Sir *John Bennet* had deli-
ver'd the Day after we came from *Wind-*
sor, and the Copy whereof, was by me sent
to the King. All these must in their Or-
der be debated. One was about the unper-
fectness of the Libel, in which we all re-
ceiv'd Satisfaction, that the Libel was well
to so much purpose as now they declar'd
they would have it. The other five, my
Lord of *London*, Sir *John Bennet*, Dr. *James*,
and Dr. *Edwards*, maintain'd: I allow'd of
three of them absolutely; and the other
two, that was Inspection of my Lord's Bo-
dy, and a Time to be assign'd by the
Judge, to try whether they might Carnal-
ly know one another, I held to be fir,
when

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when those Reasons were propos'd ; but now such Flames and Quarrels were arisen, I thought not amiss now to be forborn. My Lord of *Litchfield*, with a Pen, did note what every Man resolv'd, but principally my Words, with a Purpose to shew them to the King, as I conceiv'd, and afterwards I found it to be so. I was desirous therefore, that his Majesty might see I was not Obstinate, but settled to yield to Reason. And again, I suppos'd, that this Candor of mine, would make some of them yield to us, where they saw there was unavoidable Truth. But I found it far otherwise, for our Afternoon's Work was, that they gave shuffling and shifting Answers to the Objections, such as themselves had study'd all the Vacation ; but no Care was, whither they were True and Satisfactory, or not. And to what Sir *Daniel* propos'd, all Seven of them consented, without sticking or scruple, so that I might imagine it was a set Play. Upon the first Scruple debating, Sir *Julius Caesar* finding the Difference of Opinions, and that our Lawyers stuck strongly unto it, *Let us*, saith he, *put it to the Question, and let the major Part of Voices determine it.* When I saw this to be the Proceeding, the Lord, thought I, deliver me from such Judges. But yet observing their Manner, I possess'd my Soul in Patience. When it grew

to be dark, that the King might understand, that I was willing to allow Time to all that might be said, I remember'd Sir John Bennet to read the Sentence of the *Rota Romana*, where, in the Pope's own Consistory, about the Year 1585. a Judgment was revers'd, which an Arch-bishop in *Spain*, had given for a Nullity, in a Case being ours altogether, because, after the triennial Cohabitation, he had not assign'd a Time for the marry'd Couple to make Trial again, and to use Fasting and Prayer. This Repeal was read at large, and so was another of the *Rota*, in the same Kind. But both these were slighted, as Matters of Nothing, and so I think had St. Paul been, if he had been there. I urg'd that of *Alexander III.* That even in *France* it self, no Nullity had been allow'd; but that it was *Consuetudo generalis Ecclesie Gallicane*; and that *Ecclesia Romana*, did know or practise no such thing. This was slighted like the former, and I perceiv'd it was but in vain to speak to them, for they were resolv'd, and be it Good, or be it Bad, the Matter should be done.

On the *Friday* Morning I went to *White-Hall*, and looking somewhat heavily, the King cometh to me, and to my Lord Chancellor, and offereth us both his Hand to kifs. He might perceive by my Countenance that I was not a little troubl'd, and that

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that was perceiv'd by divers of the Lords, who privately let me know their Minds, that we had a foul and strange Matter in Hand at Lambeth. At last, the King takes me aside, and after propounding three or four Businesses, walking, he took me to the Window, and ask'd me, *How that great Cause did go forward?* I told his Majesty, *That I had no Liking of it; that I had receiv'd a Letter and Writing from him which very much troubled me, for I knew my self to be his dutiful Servant, and had not deserv'd Ill of him; that it was nothing to me whether she remain'd Wife to the Earl of Essex, or were marry'd to another Man; but that I might not give Sentence where I saw no Proof; that I had liv'd fifty one Years, almost, and had my Conscience uncorrupted in Judgment; that I knew not how soon I was to be call'd before God, and I was loath, against that Time, to give a Wound to mine own Soul; that all my Grief was, that his Majesty's Hand was in it; that for other Men I car'd not; that I chose rather to die an honest Man than a wise Man; that he must never afterward expect true Service of me, for, how could I be true to him, who w's false unto God; that if he mark'd it well, this was no Time to disgrace his good Servants: I told him, That if his Majesty pleas'd to let the Matter alone, as he did all other Causes, I would make good my Part against all England, on the Peril of my Head.* The

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King answer'd, *That I would have no Lawyers.* I reply'd, *Yes, enough, there is not an honest Lawyer in England that would not be on my Side.* His Majesty ask'd me, *Whether the rest of the Commissioners, Yesterday, did not perswade me.* I told him, *No ; but their Dealing, rather drove me the contrary Way.* For (said I) *I came thither ingeniously to yield to any Truth that should be shew'd me ; but they, on the contrary Part, in a factious Course went wholly together, and what one said, another said, be it Well, or be it Ill, without any Scruple.* To my Speech, *That it was an Example that never had been in England ;* the King said, *Yes, Berry's Case.* I beseech'd his Majesty, *That he would not believe that Cause to be any such Matter ; for if he would pardon me, it should not be long before that I would shew, that his Separation was for lack of his Stones.* In this debating, the King was very desirous to know, what should be the Reasons whereupon I stood, that I might have Satisfaction. My Answer was, *That when I was in Place of Judgment, I would not conceal the Reasons of my Sentence, but it was to no Purpose to speak them now ; it would but put his Majesty to a new Trouble to hear them, and then some Man must answer them, who look'd to his own End, and to make a plausible Answer, which would not content me, without ground of Truth.* A great Part of the Time, that I had this Speech with the
D King,

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King, my Eyes were full of Tears, which I saw, much mov'd my gracious Master, and especially, my earnest Desire, *That I might do my Conscience.* I perceiv'd the King was much overcome, by this my honest Dealing: And then, whilst his Majesty went to speak with my Lord Privy-Seal, and my Lord Chamberlain, who stood all this while at the farther End of the Gallery; and to whom, I conceiv'd, the King told much of that which I had spoken; I went my ways to *Lambeth*, to Dinner. Now grew I confident to do my Conscience right, whatsoever came of it. That Day I din'd privately, but yet, my Lord Bishop of *Bath* was with me, whom, when I had acquainted with so much of the Cause, as I thought fit, I receiv'd no Discouragement from him. My Heart was much eas'd, and now I thought I should no more be troubled. Yet between three and four a Clock, after Dinner, my Lord of *Litchfield* cometh to me from the King, and bringeth a written Treatise upon the present Argument, which was the Work of a *Scotchman*, I know not who. I receiv'd it, and promis'd that Night to read it; as indeed I did, riding in my Coach to *Croydon*; for thither I thought fit to withdraw myself, though it were late, for avoiding of more Perturbation. This Treatise no way pleas'd me, but I thought it the Work of

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some hungry Fellow, who lack'd twenty Shillings to buy Food to his Belly. Here, finding it the Day of the End of my Quarter, I settled much of my domestick Business. I forgot not to commend my self, and the whole Cause, to God by Prayer. I meditated many Things in my Bed: In the Morning I rose early, and before Day, in my Study, I set down some Heads, what I would speak unto. Then went I early to *Lambeth*, and there supply'd my brief Notes, digesting my Matter of Sentence into Order; being resolv'd to speak large, and home to the Cause, without Touch of any Person more than I must needs. By this Time, most of the Commissioners were come. I sent for my Lord of *London*, Sir *John Bennet*, Dr. *James*, and Dr. *Edwards*, singly and severally into my Study: I requir'd them, before God, not to speak any thing for respect to me, but to do that, which in their Learning and Conscience they thought to be just, and to speak that *intrepid*, without Blemish to any Man, but soundly to the Matter. I found them all avowing, That in their Souls, they found no Warrant for the Nullity. I then wish'd severally, Dr. *James*, and Dr. *Edwards*, to deliver their Sentence, with some Reasons adjoyn'd, not many, but of the strongest. I told Sir *John Bennet*, that this Day, I expected he should shew himself a worthy

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thy Man, that he should deliver his Judgment *per extensum*; that they had labour'd to blemish his Skill, and to slight his Learning especially, therefore, both for his Conscience and his Credit, he should shew what was in him, to maintain an honest Cause. If Sir *Daniel Dun*, and Sir *Julius Caesar*, who came after him, should bespatter him in their Choler, or lay any Imputation upon him, he should find that some of us would take it off him. To my Lord of London, I said, *We have three that speak first, who, I trust, will lay such a Foundation in the Hearts of the Hearers, as shall not be remov'd. But the other Side have this Advantage over us, they are seven of them Lawyers and Bishops, to answer what our three have said; and perhaps with weak Men, such a Stream of such Persons may much prevail: But let not that dismay you, my Lord, only take this Course; Deliver, first, your own Meditations; and then, having taken with your Pen, some of the Absurdities, which, in the Sentence, some of them will deliver, blast those, and let the Auditors see, that by you the Stream is turn'd. Then leave it to me, and I doubt not, in Almighty God, but to batter their Nullity to Dust. That tho' they have it by the major part of Voices, yet, the World shall see what the Cause is, and they shall have little Comfort by it. I am very well provided; I am no way afraid; and you shall see, I will not be Tongue-ty'd. So confident*

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dent was I in the Honesty of the Cause, and in the Helps of Almighty God, that I was not now afraid of ten thousands of People; but did long to be at the Business, as the Lord truly knoweth.

When now I was alone, revolving my Meditations, Sir J. Caesar cometh into my Study, to me, telleth me, *That he wonder'd that my Lord of Winchester was not come, that it was even ten a Clock, that therefore it was fit, that the Hour should be continu'd from ten to twelve.* I assented thereto; and by some of the Commissioners the Time was prorogu'd. Then cometh in Sir Thomas Lake, with a Message from the King, which he must not deliver 'till all the Commissioners were come together. So he was forc'd to stay. Between Ten and Eleven, cometh in my Lord of Winchester; who, as afterwards found, had been all the Morning at the Court. I told him, *We had stay'd for him two Hours and a half.* His Lordship slightly excus'd it. Then, in the Gallery, Sir Thomas Lake told us, *That his Majesty had sent him unto us, to deliver two Things.* The one was, *That in our Sentence we should take heed of gauling of any Person.* My Answer was, *That from the Beginning of this Process, we had ever been wary not to offend in that Kind; and that he should be much to blame, who, in the Conclusion, would transgress that way.* And so said the rest. The other was,

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That we should not in any long Manner, but compendiously, deliver what we had to say. I pray'd Sir Thomas Lake to explain that farther, whether we were only to say Yea or No, and no more: For I would obey the King's Commandment.

Tu Regina jube, mihi jussa capeffere fas est.

He answer'd, That he could not say so, but that we were to speak briefly. Yea, but said Sir Julius Cæsar, I know the King's Mind; for I was Yesterday with him, and he told me, that he expected that we should go no farther than Yea, or Nay, for of Reasons there would be no End. Yea, saith he, the King told me he was promis'd so much. By whom, said I. I think, quoth he, by your Grace. Not so, said I: But I said, indeed, Let every Man deliver his own Conscience, I will not perturb the Sentence. No more indeed will I. Then he replyeth, I know the King expecteth we should say no more, than I do like this Sentence, or, I do not like it. And that you know, Sir Daniel Dun, is the Manner of the Delegates, and not to go farther. It is so, saith Sir Daniel. Upon this, the Bishops all said, We were best to proceed in that Fashion. To which I reply'd, I will not be wilful, but if it be agreed upon, and it be the King's Pleasure, I will obey. But look you to it; for if any Man give a Reason, I am no more bound than he, but that I will return the Reason of my Opinion and Judgment. They all said, they would be observant of

it.

it. Thus Sir *Thomas Lake* was dismiss'd. Then we call'd for the Sentences on both Sides, which the Counsel had ready. They dislik'd that which was Absolutory of the Earl of *Essex*, and we approv'd it. We found Fault with the other Sentence, AnnulATORY, both for the Whole, and because some Parts in it, in our Judgment, were apparently false. But they persisted in their Intention. So we went into the Hall, where, my self, my Lord of *London*, Sir *John Bennet*, Dr. *James*, and Dr. *Edwards*, freed my Lord of *Essex*. The Bishops of *Winton*, *Ely*, *Litchfield*, and *Rochester*, together with the two Chancellors, and Sir *Daniel Dun*, pronounc'd for the Nullity, and subscrib'd the Sentence, my Lord of *Winton* pronouncing it. We perceiv'd that they were afraid we should at large speak our Reasons openly, being the last who were to speak.

The three Bishops of *Winton*, *Ely*, and *Litchfield*, went immediately to the Court, hoping to receive great Thanks for their Service, but they waited a full Hour, e'er they could speak with the King; however they sped afterward. And we were glad that we were freed of the Trouble. And now, I, who would not have given the Sentence for all the Gold in *India*, do expect God's Pleasure, what will become of this Business hereafter, and submit my self

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to God's Providence, who ever preserveth
those that trust in him.

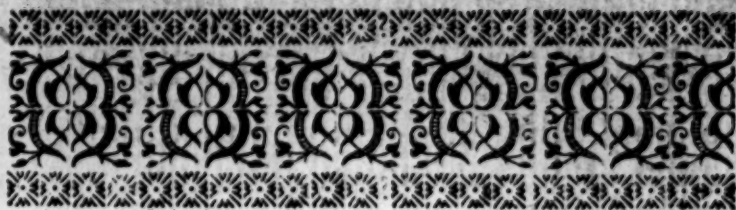
THIS Narration is wholly written with
mine own Hand, and was finish'd the
second of October, 1613, being the eighth
Day after the giving of the Sentence. And I
protest before Almighty God, that I have not
willingly written any Untruth therein: but
have deliver'd all Things fairly, to the best of
my Understanding; helping my self with such
Memorials and Notes, as I took from Time to
Time, that if there were occasion, I might thus
at large set down the Truth to Posterity, when
this Case shall be rung from Rome-Gates, or
the Fact hereafter be questioned.

GEORGE Canterbury.



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*Some Observable Things, since Sept.
25, 1613, when the Sentence was
given in the Cause of the Earl of
ESSEX, continu'd unto the Day of
the Marriage, Decemb. 26, 1613.*

THE Sentence being given for
the Nullity, the Minds of Men
in their several Places were
wonderfully distracted, and
every one spake according to
their Fancies. But for the most part there
was a Detestation of the Thing, and a great
Dislike of those that gave the Sentence,
which was express'd by all Courses that
Men durst adventure upon. On the other
Side, there was a strange applauding and
commending, of those who withstood the
Separation; and from all Parts a Testimo-
ny came unto them, That they had done
like Honest Men, albeit the only Scope
which they aim'd at, was the Discharge of
their Conscience, and not vain Popular Ap-
plause. The Arch bishop the Day after
the Sentence, went to the Court, to *White-
Hall*, and waited on the King to Chapel,

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standing also by him in the Closet, where he was strangely look'd on by the King, as he was also by some of the Lords ; but nothing being said unto him, he took no Notice of it, but bore all patiently. This Strangeness of the King held on at *Hampton-Court*, and elsewhere ; and it came to the Arch-bishop's Ear, that the King spake divers Times hardly of him, but much magnify'd them of the Affirmative Part, and especially my Lord of *Winchester*, as the worthiest Man in the Kingdom. Some Things were done also in Recompence to divers of them ; as Sir *Julius Cæsar's* Son was made a Knight, my Lord of *Winton's* Son also had the same Reward, which some merry Fellow blighted with the Name of Sir *Nullity Hilson* ; and the Bishop of *Litchfield* must remove to *Lincoln* ; and as for *Litchfield* it must be bestow'd on Mr. *Dear* of *St. Paul's*, that so Doctor *Cary* might be prefer'd to the Deanery of *Paul's*, for which it was generally suppos'd, he should pay well. But now it run currant, that the Arch-bishop must no more have to do with Naming any to Church Livings, but some Lords in Court should dispose of all ; and principally it must be provided, that Dr. *Abbot* must never be prefer'd, no, not so much as to *Litchfield*, so far was he from *Lincoln*, which was formerly promis'd unto him. These Things grew detestable to the

the People, who fear'd that even Religion would smart for it ; but the Parties most malign'd, were silent and patient, expecting God's Leisure, and Malice enough from some other Men. The first thing of Bitterness that appear'd, was a Letter from *Royston*, under the King's Hand and Signer, directed to the Commissioners in the former Sentence, but brought to the Arch-bishop about three Weeks after the Sentence. This was a most sharp Letter, complaining that they of the Negative Part, for so they were stil'd, had hinder'd the Act to be made upon the Sentence ; had solemnly Protested against that which was done ; had given unto themselves other Titles than were in the King's Commission ; had glorify'd themselves in that which was done ; by which they laid an Imputation upon the King's Conscience, who had declar'd himself for the Divorce, and other things of the like Nature. This Letter being read to the Commissioners, the Arch-bishop said, That he knew not what it meant ; for he understood of no Man that Protested, nor knew nothing of any Man's arrogating of Titles to him, or glorifying himself : And as for the Act, he suppos'd it to be made up in common Form, and never heard ought to the contrary, neither meddled with any thing therein, but left it to the Register, and what he had done with it, he could not tell.

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tell. Furthermore, he ask'd all the Commissioners particularly, if they knew what this meant, or if any of them were able to charge those of the Negative, with the Points quarrell'd at; who all, with one Consent, deny'd that they could, and expressly averr'd, that there was no such thing done at the Time of the Sentence, as had been complain'd upon. When standing thus in Admiration, Sir *Daniel Dun* took upon him to understand the Matter, and said, that if the Register were call'd, it would appear there was something in it. *Barker*, the Register, is sent for, and being demanded whether he had made up the Act, he said that he had drawn it up in a Form that he lik'd, but some other of the Commissioners did dislike it. And thereupon he shew'd two Forms, the one more large, the other more brief; but both of them having in it, that the Arch-bishop, and the rest of the Negative Party, protested against the Sentence. Here every Man wonder'd at him, out of what Ground he should do this; and all the Commissioners with one Consent, very much rebuk'd him, professing that there was no such Protestation us'd. For the rest of the Charge in the King's Letter, *Barker* freed all in all things, save only Dr. *Edwards*, who was absent by reason of his sore Eyes. The Arch-bishop upon this, desir'd the Commissioners to suspend

pend their Judgment touching *Dr. Edwards*, 'till he might answer for himself; saying, that Honour, Justice, and Charity, requir'd so much in his Behalf; and adding withal, that he doubted not but it would prove some mistaking of the Register's Part, to whom it was apparent, that small Credit was to be given, since he had so grossly set down of them, that they Protested, when all the Commissioners could witness the contrary. Moreover he desir'd Mr. Chancellor of the Exchequer, and Sir *Daniel Dun*, to certify the Lord Chamberlain, how free and innocent from those Aspersions, the rest were found, and that from Top to Toe, it was nothing but Misprision. Before this Truth was discover'd, it was known that a Gentleman of the Earl of *Northampton's*, had said to Sir *John Levison*, and that, as from his Lordship, *That there was something descry'd, which would break the Arch-bishop's Back*; such Account was made of this Business.

Thus Things pass'd silently until the next Week, when upon the *Thursday*, being High Commission Day, *Dr. Edwards* being amended, repair'd to *Lambeth*. His coming was watched; and then was deliver'd to the Arch-bishop a second Letter from the King, commending the Concurrence of all to the Act, to be made up in common Form; but requiring the Commissioners

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missioners to convene Dr. *Edwards* and the Register before them, and to charge them with all the fore-remember'd Matters, and to learn where the Fault did lie. It was also commanded, that they should require the said Doctor and Register, to set down in Writing what had pass'd between them; and if it were found that Dr. *Edwards* were to blame, he should be suspended 'till the King's Pleasure were farther known.

These Things are fallen upon; and Dr. *Edwards* shew'd that the Register had wronged him, and that no Part of the Accusation was true, *in modo & forma*, appealing to the Commissioners, what Faith might be given to *Barker* contesting against him; when it had been manifestly proved, that he had forged the matter of Protestation against my Lord of *Canterbury*, my Lord of *London*, and the rest. Time is assigned to them to deliver in their Writings, and accordingly, about two Days after, Dr. *Edwards* bringeth to the Arch-bishop his Answer, denying the Points whereon he was accus'd. But *Barker* brought nothing till a Fortnight after; and then, by Candle light, when the High-Commission was risen, and the Commissioners were departed, he delivereth a long Writing to the Arch-bishop, who could not read it that Night; but reprov'd him for detaining it so long.

On

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On the Morrow, my Lord of *Canterbury* perus'd this Declaration; and as he found it to be uncertainly and diffidently set down for some other Circumstances, so he discovered there one Thing much to be observed, and that was, that *Barker* delivered, That some few Days after the Sentence, the Lord Chamberlain sent for him, finding Fault that the Act was not made up. And there Speech was, That some desir'd to have their Titles put in, as well as the Titles of others; and for that, *Barker* named Sir *John Bennet*. Whereunto the Lord Chamberlain said, *I know no Title that he hath*: Yes, said *Barker*, *he is Judge of the Prerogative Court of Canterbury*. But *Barker* concludeth the Narration, That himself finding that he had named Sir *John Bennet* unjustly, therefore was in mind to excuse him, and was about to say, that he had done him Wrong; but the Lord Chamberlain was so angry, that he could not bring it forth; but went his Way, leaving the Lord in that Opinion.

By this it was descry'd, that in the first Letter Sir *John Bennet* was aim'd at, as well as Dr. *Edwards*, to put some Disgrace upon him, which made Men wonderously marvel at the vindicative Mind of some Men, who sought for an Occasion to do other Men Disgrace. The End of the Matter was, That no Man could betouch'd; and

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and therefore the Arch-bishop, taking Sir *Julius Cæsar* with him, acquainted the King (who was now return'd from *Royston*) with the State of the whole Matter; informing his Majesty, that Fault fell on no Man save the Register; and therefore, if his Highness were pleased to have him punished, it might be so: But for the Thing it self, since the Report was more than there was Cause, Mr. Chancellor of the *Exchequer* said, It was better to let it die, and stir in it no farther. To this the King assented, being not willing that any Punishment should be laid on the Register, whereby it appear'd, that the Intendment was, in the stirring of these Coals, to have burnt some greater Persons than *Barker*, the Register.

All this while it was confidently given out, That because the Sentence had been oppos'd, there should a Book be written in the Defence of it; and one while it should be by a Divine, and that sometimes was my Lord of *Winton*, and sometimes my Lord of *Ely*; and it was said, they were earnestly about it: Another while, it should be by a Civilian, and then Sir *Daniel Dun* must do it: But at other Times it must be by a *Scotchman*, who had written somewhat of that Argument before the Sentence; and other while two *Scotchmen* must join together about it: And to make the

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the Thing the more probable, the Lord Felton sent to the Arch-bishop for the Copy of the *Scotchman's* Writing, which was sent unto him; and after copying of it out, it was return'd to my Lord of *Canterbury* again. This Speech of a Book continu'd about nine Weeks in all; but at last Dr. *Stuart*, and Dr. *Bird*, were sent for to the Lord Chamberlain, and their Judgment was ask'd concerning that Point. Their Advice was, That it should by no means be medled withal, but that Things should die of themselves: But no Questioning by Writing; for so it might go on to the World's End: For one Book might breed another; and so, they whom it concern'd should never be in rest. This was resolv'd on; and afterwards there was no more Speech of Writing, saving only faintingly and whisperingly, but nothing to the Purpose. It seem'd that the Commissioners who were for the Nullity had enough of it, and desir'd no more to bring themselves on the Stage, being so by all Men exclaim'd upon for that which they had done.

The Bishop of *Winton*, after the Sentence, went down with great Jollity, full of Hope and Glory; but within a while after, he grew much daunted, as some about him, and namely his own Daughter, reported; for he heard many Ways of the
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strange Detestation which the World had of the Deed ; and the nick-naming of his Son, much affected him : But his Advertisements from Sir *Richard Norton*, his Son-in-Law did much trouble him : For Sir *Richard* wrote divers Times from *London* to his Wife, That he could come in no Place, but his Father-in Law was rail'd upon : That Men told him, that he thought he had a Wife, but it was no longer than my Lord of *Winton* pleas'd ; for whensoever he offended him he could make a Nullity between them. Besides, the said Sir *Richard* told M^r. *John More* of *Lincoln's Inn*, divers Times, That it was such a Disgrace unto him to bear how the World talk'd of that Sentence, that although my Lord of *Winton* promised to give him, his Wife, and Family, their Diet and Entertainment so long as he lived, yet he would get him to his own House, and live there, where he had Means sufficient, and not be subject to that perpetual Scorn which would follow him so long as he remain'd in his Father-in-Law's Company.

By these, and the like Passages, it was guess'd, that the rest of the Commissioners, who were for the Sentence, had little Comfort in themselves of that which they had done. On the other Part, the Arch-bishop and those who stood with him, had their Honesty and Justice sounded out every Day more and more ; and many Messages were brought

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brought them, and divers Letters written unto them, or shew'd them by some Friends, from sundry of the Bishops in the Land, from the Universities, from many godly Preachers out of all Parts, which was an exceeding Consolation unto them, among the many Frowns which they did bear, That there was an universal Concurrence of all honest Men to approve that which they had done. And the Arch-bishop had privately, from many great ones in Court, and Nobles, and worthy Personages elsewhere, such Significations of their good Acceptance which he did, that it cheer'd him much inwardly, and he was nothing dismay'd.

Now, about the Middle of *November*, the Wheel was turn'd about: For since nothing could be gain'd by speaking hardly of the negative Part, they thought they would make Use of them another Way, and that should be by making the World believe, that they had now given Approbation of the Fact. And thereupon it was, in Court and *London*, asseverantly given out; and the Fame of it went far and near, That the Arch-bishop, and the rest, after more mature Deliberation, had testify'd their Concurrence with the rest of the Commissioners, and all now were of one Mind. Men did not hastily believe this; but yet divers of good Rank came and sent to the Arch-

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Arch-bishop and the rest, to know whether those things were so or no. And when it was found to be but a Jargon, it gave a great deal of Contentment, and remov'd away much Scandal which formerly was taken. Yet again afterward it was bruted, the second Time, That my Lord of *Canterbury* had given the King Satisfaction in the Matter; and my Lord of *London*, on such a *Sunday*, had come and submitted himself to my Lord Chamberlain, and the rest had relented. Nay, it went so far, that in *Yelverton*, the King's Solicitor, and a great Dependent upon the House of *Sussex*, told Mr. *Pye*, the Counsellor, and Mr. *Cholmeley*, the Earl of *Essex's* Solicitor, coming unto him about Books to be drawn up, for passing back the Jointure of the Lady *Frances's* Part, and the Portion of the Earl of *Essex's* Part, *That the gainsaying Commissioners were now consenting, and the great Man beyond the Water was come over; which he knew so assuredly, that he had seen it ratify'd by the Subscription of the Arch-bishop and the rest.* Yea, farther, he added, that there was great Reason, at the first, wherefore my Lord of *Canterbury*, and the others, should stand against the Separation; for they had just Cause, at the first, to fear that this Fact might be drawn into Example, and so Marriages ordinarily be violated; but now it was resolv'd that no more such should be permitted, and thereupon they

they assented. These Things were inforc'd to be endur'd with Silence, for the avoiding of Clamour, and making of Trouble.

But now behold an admirable Device of the Bishop of *Litchfield*, which sheweth what his own Opinion was of the Validity of the Sentence. I will set it down as it came to be acted.

On the 26th of *November*, *Searle* the Proctor cometh to my Lord of *Canterbury* at *Lambeth*, and bringeth with him a Writ of *Certiorari* out of the Chancery, directed to the Commissioners in the Cause between the Lady *Frances* and the Earl of *Essex*. The Arch-bishop was pray'd to open it, and so he did, and there found that four of them, *sub sigillis vestris*, were required to certify *Recordum Sententiæ*, into the Chancery. The Arch-bishop asked *Searle*, *If this were an usual thing?* Who answered, *No, he had not known any such Thing before:* It is reply'd, *What then should be the Reason thereof?* Answer was made, *That since the Matter was controverted in the Sentence, least there should be Question of the Marriage afterwards, the Earl of Somerset would have the Sentence lying by him under the Great Seal of England ratify'd.* The Arch-bishop thought that to be but a weak Hold, yet charged *Searle* to see such an Instrument drawn, and a Certificate should accordingly be made. On the *Wednesday* after, *Barker,*

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ker, the Register, cometh to Lambeth, and sheweth a Form of a Draught in Paper, how the Certificate should be return'd in the Names of all the Commissioners specially put down. The Arch-bishop, in the Reading of it, found five or six Lines having a black Line drawn under them; and thereupon, the more marking the Words contained in them, found that which he liked not. Thereupon he ask'd Barker, Who lined those Words? Barker said, He himself did. The other ask'd, What was the Reason of it. And it was answer'd, Because Sir John Bennet and some other of the Doctors with him had disliked that Sentence. Quoth the Arch-bishop, And they had Reason for it: Who put them first in? Barker said, None but himself. Quoth the Arch-bishop then, May not the Certificate stand as well without those Words as with them? To which Barker answer'd, Yes. Then said the Arch-bishop, Let them be stricken out. Here the Register, with somewhat ado, faintly made Answer, That the Commissioners on the other Side would by no Means have them out. The Arch-bishop said, Then I perceive it is a Device to entangle us: I am ready to certify the Sentence as the Writ requireth, but I will none of this. Barker, I am first in the Commission, and for my Place sake, I would have looked, that I should have been conferr'd withal, what had been fit to return, and not to have had this Trick put

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upon me, that either I must certify that which
crosseth my Judgment at the Time of giving the
Sentence, or I must be forc'd not to certify at
all. So Barker departed, and all was quiet
until the Monday after; at which Time
the Arch-bishop was early at White-Hall,
the Council sitting that Morning. There,
in the waiting Chamber, at the End of
the Privy-Gallery, the Bishop of *Litchfield*
cometh to him, and saith, *My Lord, we have*
receiv'd a Writ of Certiorari out of the Chan-
cery, to certify the Sentence for the Nullity.
Yea, saith the Arch-bishop, and I am ready
to certify it. But, saith the Bishop, *He*
who fram'd the Writ, hath made it, sub sigil-
lis vestris, and doth not know that there is a
Seal of Office for the Delegates; it should have
been sub sigillo communi. Before the
Arch-bishop could reply, in cometh the
Lord Chancellor, and to him cometh out
of the next Chamber the Lord Chamber-
lain; and then those two Lords, together
with the Bishop of *Litchfield*, drew them-
selves to a Window, and there had they
secret Communication about the altering
of the Form of the Writ, as the Effect de-
clared; for that Afternoon, a Cause be-
ing to be heard touching *Alimony*, from
Sir *Pexal Brocas* to his Lady; and the
Committees in it being the Bishop of
Litchfield, and Mr. Chancellor of the
Dutchy,

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Dutchy, and my Lord of Canterbury being Umpire; before Mr. Chancellor was come, Bembo, Deputy to the Clerk of the Crown, came into the Parlour at Lambeth, and had private Speech with the Bishop of Litchfield. The Arch-bishop going out into the Garden, Litchfield follow'd him, and told him, *That Mr. Bembo had brought another Form of a Writ*; and thereupon shewed him the Words *sub communi sigillo*. The Arch-bishop bid him do as he thought good, and withdrew himself into the low Stone Gallery, whither Litchfield follow'd him, and used these Words: *My Lord, here is a Form of a Certificate, which hath been thought fit to use in the Business of my Lord Chamberlain; and I bear your Grace taketh Exception to some Things in it.* Then he pull'd out the very Paper which Barker formerly had shew'd. The Arch bishop answer'd, *My Lord, have I not Reason to take Exception to these Words, that post omnimodam veritatis disquisitionem, post probationes idoneas & de jure requisitas, we gave such a Sentence? For, to subscribe this, were to proclaim my self a dishonest Man upon Record: For if these Things be true, why did I deny to join in the Sentence?* Quoth Litchfield, *This here is true; for it cannot be deny'd, but some probationes idoneæ, & de jure requisitæ were used; and we do not say that all were.* The

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The Arch-bishop answered, You shall do well, therefore, to certify post probationes aliquas, and I will joyn with you ; but as it standeth now indefinitely, it will be taken as if all had been used ; I pray you therefore to alter the Certificate, and make Things plain. My Lord, quoth Litchfield, I will deal plainly with you ; because the Words were in, and doubt was made, whether they should pass or no : The King's Majesty hath been acquainted with the Business ; and he, by a Letter from Sir Thomas Lake, hath sent Word expressly, that he will have them in. The Arch-bishop said, Let them then certify who will avow those Words, for I cannot condescend unto them. And hath not that Person done a good Office, who hath inform'd the King hereof ; that Distraction may still be among the Commissioners, and there may never be an End of Difference. The Bishop said, My Lord, I could wish that you would yield unto the King, and so give him Satisfaction. The Arch-bishop answer'd, What would you have me do ? I gave the Sentence as I was perswaded in Conscience, and since that Time I have been silent, and meddle no way in the Matter : I did what I did upon long Deliberation ; and I may not in Private, upon no Ground since appearing to me, cross that which I have done in Publick. It was farther added, That there was Reason to suspect, that they did ill Offices, who held those Things still on Foot : That there never was any Man, who sought to grace himself by dis-

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gracing others, but it met him at the Lane's End, at one Time or another. These Things passed then; and after the Cause heard between Sir Pexal Brocas and his Wife, the Bishop of Litchfield said to the Arch-bishop at his Parting, My Lord, you will give us leave to certify them as we purpose? To which the Arch-bishop answer'd, Yea, with all my Heart.

The next Morning, the Arch-bishop remembered, that by the Carriage of Things in such Fashion as was pretended, he might be trick'd: For if the Names of all the Commissioners were put into the Certificate, and four of them might certify under a common Seal, it should not be known hereafter, but that he and his Fellows concurr'd therein, and that, with the Words which were excepted against: He therefore sent for *Barker*, and in the Presence of Sir *John Bennet*, and two Servants, being Publick Notaries, he expostulated with *Barker*, as serving Mens Turns, rather than caring for Peace; and then punctually he deliver'd these Things.

First, *The Writ requireth me to certify the Sentence, and I am ready to do it.*

Secondly, *If the whole Process be desired, I am willing to certify that also.*

Thirdly, *For the Words in Question, because they were put in without my Privity, and they*

they may as well be left out as put in, by your own Saying, I pray to be forborn for returning of them.

Fourthly, I require you to conceal these Things as much as you may, that the World take no new Alarm of any Difference between the Commissioners.

The Arch-bishop spake of returning the whole Process, because he had heard, that at the first, it was meant it should be so; but Dr. Stuart, and, perhaps, some other of the Civilians, dissuaded that by all Means; least, if the whole were on Record in the Chancery, every Man that list, hereafter, might censure that Sentence, and sift the Grounds whereon the Commissioners proceeded; it was good, therefore, to take away that Occasion.

When Matters were thus resolved, the Bishop of *Litchfield*, who meant to play his Prizes in this Service, speaketh to *Bembo*, to draw some Preface, or Conclusion, to add to the Certificate; that it might not only be sign'd with the great Seal, as after the From of an *Inspeximus*; but that his Majesty might add a Confirmation to it: And when Mr. *Bembo*, as unacquainted with this Fashion, did not fit the Bishop's Humour, his Lordship took on him to do it himself. He drew up, therefore, a strange Writing, as was inform'd by a credible Person that saw it, containing bar-

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barous Latin, and no good Congruity of Sense. But the Matter of it was, that his Majesty having the Authority of the Pope now in himself, and in *scrinio pectoris*, having Power to ratify, did, *ex plenitudine potestatis*, confirm that Divorce to all Incents and Purposes. In an Evening Dr. Martin was sent for to the Lord Chamberlain, and there was the Bishop with his Papers. The Doctor, as it hath been credibly deliver'd, being shew'd that Writing, and his Opinion thereupon being ask'd, did utterly dislike it, and said, *That the King claim'd nothing of the Pope's Power ; but took that as his own, which the Pope had usurped : That the King had spoke before by his Judges Delegate, and had nothing more to do : That if the Sentence were not good already, no Confirmation could make it good. And when the Bishop was earnest in Defence of his Device, there was a little Heat stricken between the Doctor and him, so that these Words passed from the said Doctor : You do, as much as in you lyeth, spit in the Face of the King our Master, by laying on him all the Matter ; whereas the Scandal that hath already been, is this, that his Majesty is said to deal so much in the Matter. My Lord, you are to blame to enter into these Things without Advice of Men skilful in the Law : Hath Dr. Stuart or Dr. Bird been acquainted herewithal ? The Bishop said, No ; but for this Matter, I know*

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know as much Law as the best of you all. Dr. Martin reply'd, No : Your Lordship thinketh, that because you have read two or three Chapters of the Cannon-Law about this late Business, you know as much as we do, who have spent all our Lives in that Profession : I tell your Lordship, I have study'd the Law these two and thirty Years ; and therefore, you shall give me leave to believe that I know more therein than you can. I am the King's Advocate, and therefore may suffer nothing with my Consent to pass dishonourable to my Master.

Upon these Contestations, the Lord Chamberlain was much troubled, saying, *What a Matter is this, that Men should be of such contrary Opinions ! What shall we do ?* When the Bishop murmur'd much that his Counsel was not follow'd, Dr. Martin said thus : *My Lord, in a Business of this Importance, I will not wish your Lordship to follow my single Advice, but let this be done ; to Morrow let Sir William Button, in your Lordship's Name come to Doctors Commons ; and let him get together Sir Daniel Dun, Dr. Stuart, and Dr. Bird, and I will attend them ; and then we will consult jointly what is fit to be done.*

This Advice was much liked ; and on the Morrow, being *Friday*, they all assembled, and, for two Hours, all Points were debated ; but the Conclusion was, *That there should be no farther Confirmation : For*

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this was to proclaim, that the Sentence was defective in it self, which would make a great Buzz in the World : And therefore, the Counsel was in general, That too much had been done, and for the Time to come, the Care must be, how to lay it asleep fairly.

This Resolution being taken, the next Knack was, that so many of the Commissioners as were for the Sentence, should be called together ; and they should be made acquainted with this, that the Bishop might be fairly put off. On the *Saturday Night*, therefore, in the Dark, at *Sir Julius Cæsar's House* in the Strand, met the Bishops of *Ely, Litchfield, Rochester*, the two Chancellors of the Exchequer and Dutchy, and *Sir Daniel Dun*, and well near for an Hour, they privately debated what they thought fit, but, as it seemeth, resolv'd as before, and so departed.

A Friend being the next Day with the *Lady Cæsar*, and knowing of the Meeting, asked her, *What about it was ?* She answer'd, *It is something about the late Nullity ; but what it is, I do not know. It seemeth, that they who were the Doers in it, think somewhat is amiss. They suppose all is not well about it, and I for my part think so also.*

A Man would have supposed, that all these Things should have contented the Bishop of *Litchfield* ; but he was so far in Love with his own Invention, that yet he would

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would not be beat off ; and therefore, to merit the more, he once again moveth the Lord Chamberlain to send to Sir *Francis Bacon*, and to Mr. *Yelverton*, being of the King's learned Council, to know their Opinion : Which being done ; and they two, for the Reasons above named, concurring with the Civilians : The Bishop, as it hath been credibly related, said of them, together with the rest, *They are all Fools.* And so ended this Stratagem ; but the Worker thereof was not yet for an End.

From the Beginning of this whole Question of the Nullity, the Bishop of *Litchfield* had carry'd himself variously, sometimes being vehement in Words, publicly against the Separation, and other Times in Deed, giving Furtherance to it. Many Speeches he had privately with the Arch-Bishop, making shew of much Honesty and Respect to him, which the Arch-bishop ever warily observed ; thinking, notwithstanding, that these had been Testimonies of the working of his Conscience, conflicting in it self, but not resolv'd what to do. In the mean Time, from the Court, from *London*, and out of the Country, the Arch-bishop was still called upon by divers worthy Friends, *That he should take heed of that Bishop ; that he was ever, and in all Things naught : That he did all the worst Offices that*

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possibly he could, and was still stirring the Coals, to procure to himself a Reputation ; that he was zealous of the House of Suffolk. The Arch-bishop forgot not those many Warnings, but carry'd himself very warily towards him : Yet out of Charity, it still came in his Mind, *He is a Bishop, I know no Evil of him ; I ought not to condemn a Man upon a Generality ; I have no particular Proof of his Misbehaviour in this behalf, although he delt ill with the late Lord Treasurer, and most falsly with the Arch-bishop Bancroft in his Life-time, and after his Death ; and for that Cause was detested by both of them ; yet an honest Man may think, that Experience hath reform'd him, and now he is amended.* Yet it much affected the Arch-bishop, that all Men speak so ill of him ; and one Speech of an old Courtier, a very honest Knight, enter'd far with him. For about a Fortnight before the Marriage, the said Courtier, speaking privately with the Arch-Bishop, among other Words, he us'd this. *I know not what the Bishop of Litchfield doth among you ; but he hath made a shift to be taken for a Knave, generally with us in the Court.* Now, whether the next Prank will verify so much or no, let the Reader judge. Eight Days before the Marriage, on a Saturday Morning, that Bishop cometh to Lambeth, and in private Conference with the Arch bishop, he telleth him, *That*

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out of his Love and Respect to his Grace, he was come voluntarily, as of himself, to know his Mind about one Matter, and it was this. On St. Stephen's Day, said he, the Lord Chamberlain meaneth to have this great Marriage go forward : Now it may, perhaps, be desir'd, that a Licence should be given by you, that the Banes may not be ask'd, which if you like not to grant, I may be the Means to free you from being mov'd to it. The Archbishop said, What have I to do with granting of a Licence ; it belongeth not to me : But wherefore should there be any Need of a Licence ; the Marriage is intended to be Publick ; Masks and Shews are made for the same ; all England taketh Notice of it, and therefore it were good, that the Banes were openly ask'd, as the Manner is of such Marriages as are made in the King's Chapel. Yea, the Lady Elizabeth herself, had her Banes ask'd. My Lord, saith Litchfield, there is some Cause why it should be done without publishing the Banes : For peradventure some Body may step up, and make a Disturbance. You know what a mad, naked Fellow, came into St. James's, after the Death of the Prince ; if such a one should come in now, what a Work would it make ? The Arch-bishop wonder'd within himself, to hear such a Reply, and thought surely, that it was no mad Body that they should need to stand in fear of, but they suspected somewhat

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else. But his answer was, *My Lord, there come no such into the King's Chapel ; there be Doors and Officers to keep such out. But if it should be suspected, that any would oppose, it is best the Banes be ask'd, for then there will be some warning of the Gain-saying ; whereas, otherwise, if at the Time of the Marriage, one should suddenly start up, it would make a greater Trouble.* Notwithstanding the Bishop went on, *That a Licence would cut of all the Doubt.* The Arch-bishop answered, *But what have I to do with granting a Licence in the King's Chapel : It belongeth to the Ordinary of the Place, and that is my Lord of Bath, as Dean of the Chapel.* Litchfield reply'd, *He never granted any, and he hath no Seal for that Office.* It was answer'd, *He never granted any, because no Body ever desir'd it ; but the Manner was, that the Banes were publish'd. But as for the Seal of the Office, who doth not know that any Seal will serve ; and none better than his Bishop's Seal, it being said, Datum sub sigillo nostro Episcopali, quo in hoc casu, or hoc Tempore utimur.* King James at the first, did use the Seal of *Queen Elizabeth*, 'till a new one was made. The Bishop proceedeth, *Yet it would be fit that you granted the Licence, if it be requested.* To this the Arch-bishop said, *I shall do that which never any of my Predecessors did.* Yes, quoth Litchfield, *If you would seek your Records, you should find*
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some so granted. The Arch-bishop answer'd, I have enquired of my Officers, and they tell me, That no such Thing was heard of, in Omni Hominum Memoria. But, my Lord, I know that my Lord of Bath hath it under the Great Seal of England exclusively, to the Arch-bishop ; so that in direct Words there is a Restraint, that he may not meddle there. Yea, but, quoth Litchfield, you have an Act of Parliament, enabling you to grant Dispen-sations to the King and his Children ; and therefore it belongeth to you. Said the Arch-bishop, Do not you think that I understand the Act of Parliament as well as you ? My Lord, Do you think that that Statute was made for these ordinary Graces and Dispen-sations ? Why, is not your Lordship able, within your Diocess, to grant a Licence, that a Marriage may be solemniz'd, and not the Banes ask'd ? Yes, saith he, I may : Nay, every Arch-deacon may do it within his Jurisdiction. Then my Lord, quoth the Arch-bishop, must an Act of Parliament be made to grant the Arch-bishop Power to do that which every Arch-deacon may do within his Precinct ? There is surely some other Matter in it. But I marvel, my Lord, that you are now so earnest for the Arch-bishop's Licences, when, as I have heard, in the Days of my Predecessor, when you were Bishop of Rochester, you would not suffer the Arch-bishop's Licences to pass within your Diocess : No, saith he, it was for
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Westminster that I did strive, not for the Diocess of Rochester. And it is true, that there be Records in that Church, that the Monks did contend with the King about divers Questions. I had Reason therefore, to stand for the Privileges of my Church. It was answer'd, So hath my Lord of Bath to stand for the Right of the King's Chapel. The Arch-bishop seeing how earnest the Man was, in so unreasonable a Thing, said farther, My Lord, you have mine Answer, but let me now tell you one thing. It is six Weeks ago, that I heard from the Court, and many Times since I have had it reiterated, that such a Trick should be put upon me : That although it needed not, yet I should be mov'd for granting this Licence, because thereby I should be constrain'd, either to grant it, and so cross my former Sentence, and involv'dly give my Consent to the Nullity, or I should deny it, and so grate once again upon the King's Displeasure. You see now I have given you a fair Answer, which may free me from both. But, my Lord, I pray God you do good Offices in this Business. I fear you put your self into many Things, which may be better forborn. But let me tell you, there was never any Man, who sought to raise himself by wronging another, but at one Time or other he had enough of it. It is now almost three Months since this Sentence is given, and since that Time, I have not meddled

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meddled with the Matter, for offending the King. I am silent, and no way oppose, and Men have their End; yet cannot I be quiet. I would have you know, that God beholdeth these things, and remembreth them. And for my Part, I am not blind, I see well what is done; and I shall not always be silent. The Time will come, that I must speak; and it shall appear I am not Tongue-ty'd. This made the Bishop not so forward as before, but Occasion of a farther Speech being offer'd; the Arch-bishop went on, and said, The Sentence which I gave, was in the Fear of God, and according to my Conscience: And if that had been done, which was convenient, and we called for, there needed not to have been any Division in Judgment. For, my Lord, you may remember when you came to me at Croydon, and brought these Papers from the King, after the reading whereof, I slept little that Night, how desirous I was to give his Majesty Satisfaction; and therefore pray'd you, fetching out the Process unto you, to tell me whereupon I should ground my Sentence. You shew'd me one Article, that he had not known her, nor he thought that he never should. I told you then, Yea, that was for want of Love, for he said, When I came out of France, I lov'd her; I do not so, neither ever shall I. It is want of Love. To this the Bishop said, Yea, and the Earl added, That he had done his Best oftentimes, Carnally to know her,

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her, but he found an Imperfection in himself. The Arch-bishop reply'd to this, *Ob, my Lord! Never say so; for his Lordship's Answers upon his Oath, are to the contrary: He found no Defect or Impediment in himself. And if I shall speak my private Opinion, although I would not have you believe it, I think the Earl as able a Man for a Woman, as any is in England. And I think to the contrary, Quoth Litchfield..* The Arch-bishop went on: *But, my Lord, when your Lordship and I had these Difficulties in our Mind at Croydon, you told me of one thing which I embrac'd as an Oracle from Heaven. And that was, that to rid our selves of these Distractions, we had no other Way, but to call the Earl of Essex again upon his Oath, that so giving us a fuller Answer, we might either have good Ground to pronounce for the Nullity, or Matter to give Reason why we might not condescend unto it. I approv'd this, and you know how the next Day, in publick Court, it was mov'd, and my Lords of Winchester, Ely, Rochester, and your self, gave very good liking to it; and no Man said any thing against it, except Mr. Chancellor of the Exchequer, who softly spake, I know not whether that will be permitted. But you may remember, you were intreated to deliver this to the King at Theobalds, from whom you brought Word, That it should not be granted, because the Earl of Essex, being partly pro-*

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vok'd by his falling out with Mr. *Henry Howard*, and partly being counselled by the Earl of *Southampton*, would speak all things to hinder the Nullity. My Answer then was, *That he was to speak upon his Oath, and we would most strickly examine him.* When that was deny'd, which should have led us to the Truth, I must confess I had never any mind to pronounce for the Separation. The Bishop seem'd to take no great Pleasure to hear these things thus repeated, but fared, as if he could have wish'd, that they all had been forgotten. The Conclusion of all was, that the Bishop seem'd to be well satisfy'd that no Licence was given, and promis'd the Arch-bishop, to take Care that he should no farther be troubled with it, assuring him, *That he did ever good Offices to him, whereof the King could give Witness, and would ; and he would ever make the best of things.* To which the Arch-bishop said, *If he did, he would take it for a Kindness at his Hands,* and so he departed.

Accordingly, the next Day the Banes were ask'd in the Chapel, and there was nothing but fair Weather, the Arch-bishop attended the King in the Closet. On the Monday the King went to *Hampton-Court* ; and that Day the Bishop of *Bath and Wells* came to *Lambeth*: He told the Arch-bishop, that he had a direct Message unto him from
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the King, and that was, That his Majesty did much marvel, that he spake not with him about the Sentence : That the King expected Satisfaction and Submission. His Lordship added, That he perceiv'd that the King had some Scruple in his Mind, which he wish'd should be remov'd before his going to the Communion on *Christmas Day*. The Arch-bishop knew not that the Bishop of *Litchfield* had dealt any Way treacherously with him, and therefore was constrain'd to answer, in general, that he knew not what to say to his Highness. He perswaded himself, that in giving of the Sentence he had done his Duty, and therefore could not tell how to make a Submission where he conceiv'd no Fault. If in any Circumstance he had err'd, he was ready to testify his Sorrow for it ; but he knew no such Thing ; yet, if his Majesty was displeas'd at him, to signify his Obedience to his King and Sovereign, to whom he was so much bound, he would not refuse, if the King were pleas'd to restrain him of his Liberty, and lay him in the Tower all the Days of his Life, to submit himself unto it patiently, without Murmuring.

Furthermore, he pray'd the Bishop of *Bath*, and (who, on the Morrow, was to go to *Hampton Court*) to signify, humbly to his Majesty, That he had nothing in this
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World more precious than his Life ; and that he wish'd, that he had given that Life as a Redemption, that the King's Hand had never been in that Business. And withal, he said, that at the coming of the King, he would attend his Majesty.

On Wednesday Night, the King came to White-Hall ; and on the Thursday, after Dinner, my Lord of Canterbury went to the Court, where they were all busy about Plate and Jewels against the Marriage. Notwithstanding, he had hastily Speech of divers Matters with the King ; and in the End, he said privately unto his Highness, *May it please your Majesty, I understand by my Lord of Bath and Wells, That your Majesty expects that I should give you an Account about the Matter of the Lord of Essex, and the Lady Frances: I can say nothing more than this, That I was put into the Commission as a Judge, and at the Time of Sentence, I did my Conscience ; and since I have not meddled with the Matter. Yes, saith the King, I hear you deny'd a Licence to be granted, for not asking of the Banes ; which I wonder you would do, since the Sentence was pass'd. No,* said the Arch-bishop, *I deny'd no Licence ; but I advis'd, that the best Course was, that the Banes should be ask'd according to the Custom us'd in the Chapel.*

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Secondly, I said, *That if any Licence should be granted, it belong'd not to me to give it, but to the Ordinary of the Place, the Dean of the Chapel, who hath it under your Majesty's Great Seal, exclusive to the Arch-bishoprick.* Yea, said the King, *My Lord of Bath said so; but I am told it is otherwise.* The Arch-bishop reply'd, *Nay, it is so indeed.*

And Thirdly, said he, *My Answer was, That never any of my Predecessors granted Licence for any Thing done in the King's Chapel: I have receiv'd Information so, from my Officers. It had then been Presumption in me to attempt that which belong'd not unto me. This is another Matter, saith the King, Were these your Answers? I was told otherwise. But I will take some other Time to speak with you.* The Arch-bishop, after this, attended half an Hour, and nothing being said, he departed.

The same Night, a Friend coming to Lambeth; told my Lord, *That he had been that Day with the Lord Knowles, where he found, that the Bishop of Litchfield had exceedingly wrong'd my Lord of Canterbury: For he had reported all the Speech about the Licence, in a spiteful Manner; said, it was absolutely deny'd: That the Arch-bishop gave out, That the Earl of Essex was very Potent for a Woman; and that he intended to que-*
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tion this new Marriage, at one Time or other, that it should never take effect.

This said, the Gentleman made a great Stir among them ; and the Arch-bishop was much blam'd, that he would never make an End : But they were much troubled at it, as fearing themselves, that all was not sure. *But*, quoth he, *when I had told them, that this was some ill Office of the Bishop of Litchfield, who had every Day new Inventions to puzzle them, that he might so much the more indear himself unto them, by signifying his Zeal for them ; and that I knew how fairly my Lord of Canterbury had answer'd him, (for so indeed he did) and that he was so far from disturbing the Marriage, that he intended to be present at it ; they were not only appeased, but seem'd much content, that his Grace would be there : And this I assure you to be true.*

When the Arch-bishop heard this, he was now satisfy'd, that the Man who had done him all the Wrong, was the Bishop of *Litchfield* ; from whom he resolv'd afterward to be very wary how he trusted him. Yet, professing that he forgave him with all his Heart, on the *Christmas-Day* he attended the King, and receiv'd the Communion with his Majesty ; and so, coming Home to Dinner, Sir *Charles Cornwallis* came along with him. This Gentleman is one, to whom, for his Love, the Arch-bishop

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bishop was much beholden ; and after Dinner they grew privately into Speech of all these fore-remember'd Stirs ; where the Knight found much Fault that so many Tricks were put upon the Arch-bishop ; blam'd infinitely the Bishop of *Litchfield* ; promis'd to acquaint some of his great Friends with his Qualities, and assured to make Things be rightly understood ; and took away with him that Report, wherein he seem'd much to joy, that the Arch-bishop would be at the Marriage.

On the Morrow, being *St. Steven's Day*, the Arch-bishop went to the Court, attended the King to Chapel, went down to the Marriage, (where, not the King, but the Lord-Chamberlain, gave the Bride) had a Pair of Wedding-Gloves, and so came Home to Dinner, where he sat with much Comfort, as being glad, that since Things must be so, they were come to an End : And so pray'd God to bless his Church, the King, and Kingdom, and himself ; that he might be free from so many Vexations, as for a long Space undeservedly had follow'd him.

THE



The SPEECH intended

to be spoken at *Lambeth*, *September 25, 1613.* by the Archbishop of *Canterbury*, when it came to his Turn, to declare his Mind concerning the Nullity of Marriage between the Earl of *Essex*, and the Lady *Frances Howard*.

[*Seven of the Commissioners having before declared themselves that they would Sentence for a Nullity, and great Reason being to think, that the Bishop of London, Sir John Bennet, Dr. James, and Dr. Edwards would give Voices against the Nullity.*]



Y Lords, and you the rest of the Commissioners, I have had a great Contention and Deliberation within my self, in what manner I should utter my Judgment in this present Cause, since,

since, after the Speech of those Three who first began, so great a Stream and Concurrence together of the rest, (my Lord excepted, who spoke last) have given their Opinions for the annulling of the Marriage. But yet I hold not my self concluded thereby, but that I may declare my Judgment, having learned that *Suffragia* among Wisemen are as well *appendenda* and *ponderanda*, as *numeranda*; And it was no shame for *Phocion* in *Athens*, upon good Ground, to contradict the whole City; neither was *Paphnusus*, in the Council of *Nice* the less respected, when he stood against the whole Synod; nay, it was his Honour, that by delivering of his Sentence, he altered the Resolution which that whole Assembly had intended to take, which I freely acknowledge I have no hope to effect at this Time. And yet, though I have not that hope, but might very well spare this labour, yet my Conscience telleth me, that it becometh me to speak in a Matter of this importance, because, not only, *Deum timeo*, I fear God, which I doubt not but all of this Company doth; but I am afraid of God, least he should be angry with me if in this Case I be silent. And I think it is expected of me, since I am here present, that I should not sit as an Idol, and only fill a room; for that were to lay an Imputation on my self, that I had undertaken a Cause, which in publick I durst not offer to maintain.

I must acknowledge, that in delivering of my Mind in this Business of so great Weight, I do find two defects, that I cannot so pertinently speak unto the Purpose as divers of the Judges here : The one is, That I am no Lawyer ; and the other is, That I am no married Man ; by both which I am disabled, that I cannot speak with that Confidence concerning some Particulars, as most of you, the Commissioners are able to do ; but in lieu thereof, I have endeavoured to furnish my self some other way concurrent to this Purpose. As by reading, by conferring with some whom I do trust, with pondering thereupon, so that it hath lost me much sleep at several Times, with frequent Prayer unto God, that he would direct me aright ; which I have more begged of God in this Cause, than ever in any that was before me in Judgment. And besides, I bring with me *animum candidum*, a Mind devoid of Passion, or any Perturbation, which inclineth to no part for fear, or for favour, for spleen or for hatred : From which, I thank God, in pronouncing of Sentence, I ever have been free, remembering that Judges are in the Place of God ; and as *Jehosaphat* said, 2 Chron. 29. *Non hominis judicia exercetis sed Domini, & quicquid judicaveritis in vos redundabit.* He then who sitteth in the Place of God, and in pronouncing of Sentence will vary from Ju-

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Justice, he leaveth God, and sheweth himself worthy to lye in the flames of Hell, for abusing of the Trust which is committed unto him, which I hope I shall not do. And *cui boni?* to what end should I transgress in Judgment for either side, when I have no reason to be partial for either, since it is indifferent to me in any particular, whether this Question receive one or other determination.

Where least I should be mistaken, I think it not amiss, as publicly I have done divers Times before, to let the World know what my Judgment is concerning the Impotency of a Husband towards his Wife. That since Marriage in young Couples is for carnal Copulation and Procreation thereupon, and that it is the intendment of those which contract Matrimony to receive Satisfaction in that Kind, that if this Nobleman be not able to perform those marital Rights unto his Lady, he doth unto her a very great Injustice to retain her as his Wife; and we shall perform a great part of Injury and Cruelty towards her, if we do not free her from this Burthen and Yoke. We are bound in Conscience to do it, since it is in truth no Marriage, but a pretended Matrimony, that Consummation being wanting, which was one of the first Things in Intention when they two came together: For *impossibilitas officii*, by a receiv'd Maxim,

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solvit vinculum Conjugij. But the Point is, that before the Separation be pronounc'd, it must appear unto the Church, that there is good Cause for the same; which must not be upon light Surmises, or questionable Suggestions, but upon evident Declarations and Proofs, which may give full Contentment to the Conscience of the Judge. The Marriage was overt and in the Face of the Church, whereby they were joyn'd into one; let the Reason of Separation be as clear as that was, if it possibly may be; or let it be so apparent, that the Church may well know, that there is ground to stand upon for pronouncing of a Nullity. Now this is it which I doubt will not fall out in this Case of my Lord of *Essex*; there is not proof sufficient to inform the Minds of the Judges that this Knot should be dissolv'd, and themselves set at liberty, the one from the other. And then you understand what the general Rule is, *Quod dubitas ne feceris.* And in this Controversy there seems in my Judgment many Reasons of doubting, that the Separation desired ought not to be granted. You shall hear some few of them.

I. The first Scruple which ariseth in my Mind, is from the uncertainty of that Proceeding, which we have had in this Business. For in the handling of it formerly, we had it propounded, that there must be

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a Nullity *propter maleficium versus banc.*
That was it which we debated, and for the
which we turn'd our Books ; that the
Counsel for my Lady did still insist upon,
not naming the Words indeed, but by a Pe-
riphrasis, or Circumlocution, describing the
same. And it cannot be forgotten, how
Dr. Stuard, being told by one or more of
the Commissioners sitting then in Court,
that his whole Speech did still point out
maleficium, he answer'd, it is true, that is
it which we intend. The Authorities al-
ways brought out of the Canonists were in
direct Terms upon *maleficium*, the Proofs
intended nothing else. And we all under-
stand, that to have an Impotency unto a
Man's own Wife, and an Ability unto o-
ther, and that incurably, and that for some
latent Reason, which cannot be known, 'is
the Case of *maleficium* ; and that is the mat-
ter alledged in the Libel, and whereupon
my Lord is examin'd. And yet, now since
we sit upon the second Commission, *male-*
ficium is disclaimed. One

My Lord of
Winchester.

of my Lords hath avowed
it, that he dislikes that
maleficium ; that he hath
read *Del-Rio*, the Jesuit, writing upon
that Argument, and doth hold him an idle
and fabulous Fellow ; that he rather suppo-
seth it to be God's own handy Work, than
any Thing from the Devil. Another of

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my Lords hath assented thereunto, and *maleficium* My Lord of must be gone. Now I for *Ely.* my part will not absolutely deny, that Witches by God's Permission may have a Power over Men, to hurt all, or part in them, as by God they shall be limited; but how shall it appear that this is such a Thing in the Person of a Man? The Question is, *An factum sit*, and how it shall be discovered? But to make it a Thing ordinary, as the *Romish* Writers do beyond the Seas, I take it to be a Fable, acknowledging that for Truth, which a Bishop well versed in that Argument did lately write, that Maleficiation is the very garbage of Popery; a Thing so base, that we who have learned Christ aright, should despise and contemn, allowing it no place amongst us. Which Course it were a shame if we should not observe, since the Papists themselves grow very weary of it; and that even in *France*, where there hath been more ado with this Maleficiation than in any other Country; for there the common Sort at the Time of their Marriages, were wont to be afraid to have the Words of Conjunction in Matrimony to be spoken aloud, *Quos Deus conjunxit, nemo separet*, or the Benediction to be publickly given, lest some Witch or Sorcerer in the same Instant should tye a knot upon a Point, or play

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some other forcering Trick, whereby the new Bridegroom so long as that knot lasted, should be disabled from actual Copulation with her whom he had married. And for avoiding of that hazard, they had therefore their Matrimonies celebrated in the Night Time, and in some private Place, where none came but such Friends as they dared to trust. This Superstition grew so common, and Men were so abused by the fright that came thereof, that the Prelates of France, about Thirty Years since, in a Council at Rheims, made this Decree a-

Bochellus in Decret. Eccles. Gallic. lib. 3. tit. 5. cap. 176. Anno 1583.

gainst it. *Peccare graviter admonemus eos, qui noctu vel clanculum benedictionem nuptialem sibi dari procurant propter metum maleficij: Maleficium enim se vitare posse, credere debent, si eo pietatis affectu ad conjugium accedant, qui præscribitur in sacris literis, videlicet ut cum timore Domini, & amore filiorum, magis quam libidine impulsæ copulentur, devote susceptis pœnitentiæ & Eucharistiæ Sacramentis.* And the Year after that, another Council in that Kingdom doth speak

Idem, lib. 1. tit. 14. cap. 7. ex Concilio Bituricensi, Anno 1584.

yet more plainly. *Et quia Christiano nomine indignus error nostro seculo inolevit, ut signationibus, consignationibus, vinculis & nexibus Matrimonia impediuntur: Hac Synodus communione*

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And the Lady HOWARD. 101

munione Ecclesia interdicat omnes eos, qui hujusmodi superstitionibus utuntur : monetque fideles, ne hujusmodi commentis fidem habeant, sed in Deo fiduciam certam constituent, nec idcirco matrimonia noctu fiant, sed in luce & frequentia hominum. If it be rotten ripe in France ; if it be Error *indignus Christiano nomine* ; if Men must not *fidem habere hujusmodi commentis* ; what do we with it here in England ? let it be cast away as a rotten Rag of Popery. And yet I do now find, that in the very Sentence which is this Day to be given, it falleth directly upon the Description of *maleficium versus hanc*. So that what should I think of this Case of my Lord's, which is built on such a Foundation as no Man will stand to ? We are on it, and off it, and avow it we dare not, yet fly from it we will not. This moveth Scruple in me, how I should assent to that whereof I can learn no certainty from the Council of my Lady, nor from you that be the Judges, who speak for this Nullity : I dare not rest my Building on such a sandy Foundation.

2. Another Matter which troubleth my Mind, is the Novelty of that which is now set on Foot ; a Thing unheard of in our Church, and unknown in our Kingdom. We have many Stories, old and new, of Things done in this Land ; we have Registers extant in every Diocese ; we have Acts and Records which specify those Accidents

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which have fallen out in the Days of our Fore-fathers. I have caused search in many Places to be made, and so I know have some of you, the Commissioners; and I have called upon you for the same, but I can have no Precedent of any such Example that hath passed in our Kingdom. No Memory of Man can express unto me the Name of that Person, whose Marriage was annull'd for Impotency towards his Wife, when he found an Ability of carnal Copulation with any other Woman. It is this Year, 1613. that hath set aboard this present Imagination, for the former Ages knew it not. It is safe walking in the Ways which are treaded out unto us. We have great Reason for our doings in these Human Actions, when we do those Deeds which formerly were done by our Predecessors. I have had many worthy Men, which have gone before me in the Place which I now hold, Men learned, Men judicious, great discoverers of Impostures; Men that have done great Services for the Nation where we live; but of them never any had such a Case before them, they never gave Sentence for a Nullity of Marriage upon such an Inability. I know not whether it be a happiness or unhappiness, that I must be the first to sit in a Commission for determining such a Controversy.

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I know to meet with this Objection, it is whisper'd sometimes, that there is an Example, and that is *Bury's Case*, which is urg'd as a Precedent unto this now in Question. But indeed, that is no Pattern of this, the Dissimilitude is great between the one Case and the other, for *Bury* had his Stones stricken off with an Horse, that nothing but a little of one of them remained. I will read you the very Case, which if any Man doubt of, shall be avow'd unto him. Thus then it doth follow.

John Bury, Esquire, was lawfully seised in his Demeans as of Fee, of, and in divers Mannors, Lands and Tenements, within the County of *Devon*. The said *John Bury* did the 20th Day of *November*, in the first Year of *Queen Mary*, marry one *Willimot Gifford*, and they lived together Three Years; and the said *Bury* could not carnaliter cognoscere dictam *Willimotam*.

Afterwards, viz. the 17th of *May* 1561, the said *Willimot* called the said *Bury* before the Ecclesiastical Judge, and charged him to be *impotentem ad coeundum cum dicta Willimota, propter vitium perpetuum, & incurabile impedimentum ad generationem, & ejus inhabilitatem, &c.* and thereupon desired to be divorced. In the Proceeding before the Judge, it was proved by divers Witnesses, of which two were Physicians, that the said *Bury* had but one little Stone, and

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that no bigger than a Bean. It was also deposed by divers Matrons, that the said *Willimot Gifford* remain'd a Virgin, and incorrupt; and the said *Bury* confessed no less: Upon which Proof, and Confession of *John Bury*, the Ecclesiastical Judge pronounced Sentence of Divorce, and did thereby separate them.

Afterward the said *John Bury* took to Wife one *Philip Monjoy*, his first Wife, *Willimot Gifford*, being then alive; and the said *Philip* had a Son in the Time of their continuing together, *John Bury's* first Wife being alive.

Afterwards, the said *Willimot* being still living, the said *Monjoy*, of her own accord, without any Sentence of Divorce, forsook the said *John Bury*, and marry'd one *Langeden*, with whom she continued. The said *John Bury*, and his first Wife *Willimot* died, the said *Monjoy* and *Langeden* then living, marry'd together.

The Question is, Whether *John Bury*, being divorced from *Willimot Gifford* for Impotency, the second Marriage, solemnized between the said *John Bury* and *Monjoy*, during which Time the Issue Male was born, be in Law a Marriage or not.

It appeareth by the Process made in the Cause, and the Words of the Sentence grounded upon the same Process, that the first Marriage was pronounced to be void,

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ing ask
same.

And the Lady HOWARD. 105

propter defectum & vitium testicularum,
which made the said *John Bury*, impotent
& ineptum ad actum generandi, &
coitum conjugalem. And so in all Respects
this second Marriage with *Monjoy* is void,
and of no effect: For either this Cause of
the Dissolution of the first Matrimony is
true, which is always to be presum'd, un-
til the contrary do appear, and then the
same Cause doth make the second Mar-
riage void also; or else, if it any ways ap-
pear, this Cause of the Dissolution of the
first Marriage to be false; *Et Ecclesia erat*
decepta, quia satis potens ad generandum, &
quod in ipsa generavit. And in that Case the
first Marriage is good in Law, & debet re-
dire ad priora connubia: And so the second
Marriage is utterly void.

We are of the Opinion above laid
down.

John Loyde,

Henry Jones,

John Hone,

Nicolas Stuard,

Edward Crompton,

Robert Fourth,

William Farrand.

Whether this be true or no, I appeal to
Dr. Stuard, who is here in Presence, and
of Council for my Lady, who, I know,
will affirm it, because, not long since, be-
ing asked by me of it, he confessed the
same. And here is *Dr. Farrand* now of

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Council for my Lord, who was used—for his Advice in this Case of *Bury*; and Dr. *Hone* is yet living, who can testify the same. For I will suppose, that a Man cannot forget such a famous Case as that was wherein himself was employ'd; but if all these were dead, I know where Records be, which still will continue. If this then were the Matter in Question touching *Bury*, *defectus testicularum*, what is this to the great Controversy now depending before us? And if this be the only Precedent, that should be the Inducement, that the Sentence to be given in this Cause is not new, but the like hath been heard of before; I am where I was: We are now to act a Novelty, a thing strange, and unheard of in the Church of *England*, whereof let other Men be the Managers, I may have no hand in it.

But perhaps it will be said, that in some other Countries, and especially in *France*, these things are well known, and the Examples of one Kingdom, especially being so near unto us, may be an Inducement for us to do the like, since the Reason is the same. My Answer thereunto is, That I that live in *England*, am to frame my self to those things, which I find in the Church of *England*, whereof I see no reason, but there should be as great Esteem, as of any Church in the World. In the Days of our
Fore-

Fore-fathers, as our Nation was held a very noble Nation, so was the Church of England held a very famous Church. *Ecclesia Anglicana*, as might easily be shewed out of *Matthew Paris*, and by divers things in some later general Councils, did carry a greater Sway. And why should we at this time, in any thing, yield unto any Church in the World, since it is a thing well known, that the Knowledge of Divinity doth abound here, beyond all other Nations? and Men of this Land have beat down the Power of the Pope, and made evident divers Questions in Matters of Theology, beyond all the Parts of Christendom: But beyond this, I do know, that the Customs of Churches, even by the Determination of the Pope himself, ought to be the Rule of Judgment in this Nature. We have a famous Place inserted into the Body of the Law, written by Pope *Alexander the 3d.* unto the Bishop of *Amiens* in France. It is worth your hearing; *Quod sedem Apostolicam consulisti super his, quæ tibi dubia existunt, gratum gerimus & acceptum, & tua exinde fraternitas non parum commendanda videtur. Ex tua*

De frigidis & maleficiatis, cap. 2. in Supplemento.

siquidem partem nobis est intimatum, quod quadam mulier, tui Episcopatus cuidam viro nupserit, asserens quod os utriusq; inguinis rupturam, genitalia

ejus

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ejus abscissa fuissent; nec dum ab eo cognito fuisset, qui utiq; factus leprosus, se pariter & sua domui reddidit infirmorum. Mulier vero ad domum patris reversa sicut asseris invenis, alii viro nubere desiderat, & conjugali affectu conjungi. Unde licet Romana Ecclesia non consueverit propter talem infirmitatem, vel propter alia maleficia legitime conjunctos dividere, si tamen consuetudo generalis Gallicana Ecclesiæ habet, ut hujusmodi matrimonium dissolvatur; nos patienter tolerabimus, si secundum eandem consuetudinem, eidem mulieri cui voluerit nubendi in Domino concesseris facultatem. By this we do find, that the Church of Rome it self doth grant no Separations in Matters of Matrimony, where the Church of France doth; and if the Pope permit in France it self, that a Divorce should be made, it is but a Toleration, and not this neither, but where it is *consuetudo generalis Ecclesiæ Gallicanæ*; which if you will apply unto this Cause in Question, you must shew me, that in England it hath been a general Custom, that a Nullity in Marriage may be pronounc'd *propter impotentiam versus hanc*; which if you cannot shew, as indeed you cannot, nor give any true Example, that ever hath been of any such Separation within this Church; I may both in Law and Conscience conclude, that I dare not introduce any Novelty, and so consequently pronounce for the Nullity of
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this Marriage. Many things are done in *France*, whereof if we in *England* had the Examination, we should peradventure find the Fact different from that which they conceiv'd ; or if we agree in the Fact, we should give another Sentence. It is not unknown how, within the Space of one Year, there hath been much ado in *France* about two Women, *Magdalen* and *Louyse*, pretended to be possessed with a great many Devils, and how *Verrine*, a principal Spirit in one of them hath avow'd and maintained the Mass, Invocation of Saints, Adoration of Images, and a great many other Points of the Grossness of Popery ; and a Book hereof hath been printed and reprinted in *Paris*, with Approbation of the State, and Allowance of learned Men ; in which the Church of *England* would certainly dissent, and proclaim the whole Business to be but an Imposture ; as the very like was in the Days of Queen *Elizabeth*, when the Devils of *Denbam* were said to possess *Sarah Williams* and her Sister, and some other Persons ; and much ado was made of it, and divers fond People believing those Knacks, turn'd Papists thereupon ; yet the Issue of all was, that it proved no better than a shameful Delusion, and a great abusing of credulous and light-believing Persons.

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3. But now to proceed farther ; if it shall be said, It is not the Novelty, nor the Want of Custom here in *England*, which should prejudice the Truth ; *valeat veritas*, wheresoever or whensoever it appears : The Proofs are evident whereupon we do stand, and that will enforce the Sentence. My Answer thereunto is, let that be made manifest, and clear and perspicuous, unto the Conscience of an understanding Man, and I shall concur with you ; but how shall I find this in a Matter of this Quality ? Because it is nothing else but Truth which we do aim at, it were fit that all Probations, if not which are possibly, yet at the least which reasonably may be had, should be got together to enforce a Conclusion of this Consequence. My Books tell me, *In valore matrimonii investigando quaecunq; probationes possibiles adhibenda sunt, & potius debent esse superfluae quam diminuta.*

Prov. 25.

It is Solomon's Saying, *It is the Honour of a King to find out a thing.* And wherein can Judges bestow their Time better in a Point of Difficulty, than to search and search again, by all honest and good Means, to know what is the Bottom of that which lieth secret, that they may satisfy their own Conscience, and the Conscience of others, in the Sentence which they give, and leave no kind of Scruple, which may trouble their own Thoughts.

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And the Lady HOWARD. 111

Thoughts ? Whether these things have been done in this present Case, I appeal to your own Consciences ; whether the Writers do not mention divers things ; whether the Council for my Lord have not spoke of sundry Matters ; whether we that be the Judges, have not thought of divers Courses convenient to be held ; of all which, no Piece or Parcel hath been permitted unto us. The Proofs then which we have had, do arise only out of the Depositions, and if there be not Proof sufficient, where shall we seek for it ? Let us then consider them. I will tell you my Opinion of them. I find nothing in them all, which is not in Substance contained in the Answers of my Lord of *Essex* ; a noble Personage saith, that in the hearing of divers things, the Earl hath said, that he was not able to know his Lady carnally ; the Earl thinking this to be true. But this is but a Relation of Wonder spoken extrajudicially ; and therefore for the understanding of the Truth therein, we are to have Recourse unto that, which by the said Earl is judicially deposed. Divers Wittnessees do speak, that the Earl and the Lady have liv'd and lain together for divers Years, my Lord doth acknowledge it in his Answer ; the Matrons and Midwives do declare, that in their Judgment, my Lady is a Virgin, and therefore, that she was never known
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carnally by the Earl ; himself confesseth that he did never know her. So that now, all in Substance depending upon his Lordship's Answer, it ought to be our Labour to scan that exactly, and to judge of it circumspectly. Doth not he then say, in *responsione ad quartum* ; that tho' divers times, in the first Year of their Cohabitation, he did attempt to know her, (which divers times may be twice or thrice, and no more) yet in the two latter Years, he did never attempt it ? But doth he not say plainly *responsione ad tertium* ; that since the time of his Marriage, he had not, nor hath any Sickness or Impediment, to hinder him, but that he might have had, and may have carnal Knowledge with a Woman. This is for the General, that he hath no Impediment ; but in *responsione ad quintum*, doth he not descend more particularly unto his own Lady ; that it is true that he did never carnally know the said Lady Frances ? Mark now what followeth ; but that to the Act of carnal Copulation, he did not find any Defect in himself. Indeed he was not able to penetrate into her Body ; but he layeth the Faults of that upon her, as may be seen in his Answer unto the 7th Article. And it may not be forgotten, that in the End of the Answer to the 4th Article, he saith, that sometimes she refused him ; these things are evident, and

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cannot be denied. The only Matter which maketh shew against this, is, that he acknowledgeth that he hath lain by her, and hath had no Motion to have carnal Knowledge of her ; but especially, that in the End of his Answer unto the 6th Article ; and believeth he never shall. These Words are the Shield and Buckler of the contrary part ; but how easily do they vanish away, or fall to the Ground ! For I appeal unto you all, who were present at the Examinations (and those were ten of us in Number, who now sit here present) whether the Earl did not openly subjoin that to his Answer ; *When I came out of France, I did love her, but I do not so now, neither ever shall I.* I appeal unto the Conscience of you all, except my Lord of Winton, and my Lord of Rochester, who were not then Commissioners, whether this be so or no ; here then is the Matter, it is the Want of Love, which restraineth all Motions of carnal Concupiscence, and not any Impotency ; it is *defectus voluntatis*, and not *defectus potestatis*. Let Discontentment be removed, and there will be an End of all the Inability : Married Men best know these things ; but out of common Reason, there can be no great Longing, where there is no great Liking ; many things they say fall out between Man and Wife, that for some good Space of time, there

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there is no carnal Conjunction, and yet no Impotency concluded thereby may be. The Case is famous of *Pulcheria*, Sister unto the Emperor *Theodosius* the younger, who having vow'd Virginity, was notwithstanding afterward, for great Reason of State, thought fit to be marry'd unto *Martianus*, who thereupon was chosen Emperor; she would not condescend thereunto, till she had Promise from him, that her Virginity should be preserved, and with such a Promise he did marry her, so that they lived together in Shew as Man and Wife; but indeed as a Brother and a Sister. Our Stories do make mention, that he who was called Saint *Edward* in *England*, I mean King *Edward* the Confessor, did marry a Lady, the Knowledge of whose Body he never had, neither did this wedded Couple ever endeavour to break their Virginity. The Writers do declare no other Reason hereof, but that they had an Opinion, that to live in Virginity, was the more meritorious, according to the Superstition of those times. Now were it not a strange Argument, to conclude in this manner, that because *Martianus* had not conjugal Copulation with *Pulcheria*, therefore he was a Man impotent; or, because King *Edward* had not carnal Knowledge of his Wife, therefore he could not know her? I know the Circumstances of this present Question do differ

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differ from those, but the Ground of the Argument is the same. Want of Act upon private Reason, will never enforce a Want of Power. And this is our Case, as I understand it, which maketh me unwilling to consent to this Nullity.

4. There followeth now another Argument, which I shall deliver briefly. We have always agreed, that the Chapter in the Law, which containeth our Case, is the Chapter *Litera de frigidis & maleficiatis*; for if it be not there, it is no where to be found. When we have deliver'd many things appertaining to this Cause out of the best Writers of the former Ages, or of our own time, as that my Lord should be inspected, or that Physicians should use their Art to discern and remove Impotency, if any were to be found, or that Fasting, Prayer, and Alms should be exercised to overcome this Evil, and divers other Points of like Nature; it hath still been answered to us, to say the Interpreters, but it is not in the Law; or it is in the Decrees which bind not, but it is not in the Decretals; or it is a Council and Exhortation; but it is no Mandate or Injunction. I now therefore mention some things, which is in the Law, and in the very Body of this Law, and it is the Pope's Mandate; and that is, that my Lord should have given his *juramentum cum septima manu*, as well as my

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my Lady ; for Want whereof, the whole Proceeding is annullated. This is the Pope's Commandment, *Quocirca mandamus*, and it requireth the Oath of both, *ipsis cum septima proquinquorum manu firmanibus juramento, se commisceri carnaliter nequivisse*, then *proferatis divortii sententiam inter eos*. This is a Thing so clear, that when on *Thursday* last, by chance, there fell mention of it ; the Council for my Lady were so far

Dr. Stuard,
Dr. Byrde.

from giving Answer to it, that to speak plainly, they stood as Men blasted or blighted with a Lightning, and knew not which way to turn them ; as was manifest not only unto us, but to all the Standers by ; which I do not utter to do them any wrong, for they are worthy Men, both learn'd and faithfull to the Cause which they undertake ; but the Note is, that this Objection can receive no true Answer. I know, that since that time, there hath been Labour made, to give a Salve to this Sore, but no Man's Wit can do it. I said, and say still, that no Man's Loquence, neither any Man's Eloquence, can perswade me, that *ipsis firmantibus juramento* is of the singular Number. I know there hath been tumbling and turning of Books, to find some Shew to meet with this Objection, but nothing can be found, which will hold tuo this Water. The Proceeding there-fore

fore doth appear to be imperfect and defective in that, which is mainly requir'd by the Law, which makes me to conclude in this fashion against some imperfect Speech touching my Lord of *Essex*; his affirming or denying of his own Inability towards my Lady; that either he doth confess it or deny it: If he do acknowledge it, where is then his Oath *cum septima Manu*, which the Law imposeth? If he do deny it, where is then your Proof of his Inability, since you ground the whole Substance of the Nullity upon his Lordship's Answer, *that he could not know her carnally?*

I must yet crave Patience to go a little farther. One other Exception which I take unto this Nullity, is the manner of the Sentence, which by us is to be given, which hath ever been resolv'd should be in general, not expressing any Reason particular wherefore we do give it. To say that my Lord is *impotens in genere versus hanc*, and not to tell wherein, is to propound a Riddle to the World, which no Man understandeth. It were a strange Thing in Learning, to say, that such a Creature is Animal, and not to tell whether it be a Man, or a Horse, or a Fish, or a Bird. And although it hath been said, and strongly maintain'd, *That it is enough in a Sentence to pronounce a Thing in general, and that*

Sir *Julius Caesar*,
Sir *Daniel Dun*.

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the Judge is bound to give no Reason of it ; yet I would be glad to know whether, how-soever I will conceal the particular Reason from the Hearers or Standers by, yet were it not fit, that I who am the Judge, and must give the Sentence, or at least consent unto it, should know the Ground whereupon I do give it. Give me leave to speak my Conscience, I think a Sentence, that propter latens aliquod impedimentum, which is perpetuum & incurabile versus hanc, is nothing but a device to serve a present Turn, which we must deliver in such obscure Words, to blind Posterity that comes after, and to amuse those which will inquire into it, as if we had known something which we held not fit to utter, when in Truth we know nothing. I find the Texts of the Law do still set down the Reason, and give a Case particular, as Frigidity, or Section, or unfitness of the generative Part, or some such other Matter ; but for an Inability, propter latens impedimentum, my dulness is such, that in the whole Book I cannot discover : And it is a Mystery that cannot enter into me, how a Man should be potent unto other Women, and impotent to his Wife, if it be not in Case of Phrensy, which is not latens impedimentum, and which also findeth lucida intervalla. It

Cap. Littera.

was the Assertion of him in the Law, That he did not

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know his Wife, but that he had a Power to know other Women. But what wise Man doth believe him? Or what is there in the Text which doth declare it to be true? I will end this Point with that of our Saviour in the 29th of St. *Matthew*, That there are three Sorts of Eunuchs, or Men unfit to marry; the one is of God's making, the second is of Mens making, and the third is of their own making. The first are they that are past from their Mother's Belly, who either are *frigidi*, or such as have not Members fit for Generation, or some apparent Debility. The second are those who are castrated by Men, or by some violence have that hindred in them, whereunto by Nature they are fit in respect of Procreation. I will not here dispute that idle *Maleficium*, because your selves are flown from it. The third hath no coherence with this Nobleman. Let me know then, in which of the former two you do place it. Is he past from his Mother's Womb? why then do you give him leave to marry again? that he who hath deluded and frustrated one, may also delude another. If he be in the second Rank, why do you not tell us what the Violence is which he hath sustained from Men, or from any other Creature. Let us have, I pray you, some kind of Satisfaction, and let not this Ænigma in general blind us, lest the World should say, that

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that wilfully we shut our Eyes against the
Truth.

6. One Reason I have more, why I yield
not to this Nullity, and then I have done.
It is drawn from the Inconveniences which
will follow thereupon, if we dissolve the
Matrimony in such Case as is now desired.
I look first on the detriment and harm which
will follow, if the Marriage do continue in
force, and in vigour, and I do find, that all
the inconvenience doth redound but to one
Person. Between a Lady and her Husband
there is some discontentment, which Time
and God's Grace may easily remove: There
is then an end of that Controversie. Or if
the disagreement shall never be appeased,
it is no more but one Lady doth want that
Solace which marital Conjunction would
afford unto her; which many a good Wo-
man is enforc'd to endure, and yet com-
mits no Sin, neither labours to violate the
Laws of the Church: For suppose the
Husband be sick of some long Disease, or
languishing Weakness, must not the Wife
sustain it with patience and quietness? Sup-
pose the Husband be Captive in some Fo-
reign Nation, or Prisoner in his own Coun-
try, whereby occasion of marital Comple-
xion is taken from the Wife, no Divine
will pronounce, that a Separation is in this
Case to be sought. Let a Woman do that
Modesty, which others are inforced to do
out

out of Necessity ; and let her expect God's leisure, in Fasting and in Prayer, and in other Humiliation. This is all the Inconvenience which ariseth to one Person, if she have not the Performance of conjugal Duty.

But look on the other side, what are the Incongruities, or rather Absurdities which will easily follow, if such Dissolutions of Marriages be permitted. I will name only two. The first is the hazard of violating and annulling of Marriage by an ordinary Practice ; for if the Gap be open, who will not run in : And the Judge must dispense the Law indifferently to all, if the Proofs be accordingly ; for we may not say, that it is for noble Personages, and great Peers in the State, and not for others of inferiour Rank. Whatsoever Couple therefore have no Children, and live discontented, come presently to take part of this general Jubilee : And, albeit they know in their Consciences, that it which they attempt is unlawful ; yet to satisfy their Fancy, they will collude the one with the other, and enter a Prosecution secretly agreed upon, howsoever in open shew they seem to differ the one from the other : And who can doubt, but for Money or Favour, they may procure Witnesses, and others who are to be used by the formality of the Law, to testify and depose so much as serves the Turn. By which means we are at a fair pass, when

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not only the Marriage-Bed shall be defiled, and Adulteries made frequent, which is against the second Table of the Law, but Perjury shall be committed, and God's Name taken in vain, which is repugnant unto the first Table.

A second Inconvenience is the Danger, least both Parties which are freed from their Matrimony, should divers Years after be return'd to it again, when perhaps the Husband by a second Wife hath Children, and the Wife by a second Husband hath store of Issue also; for there is no doubt in the Law, but if a Man supposed to be *frigidus*, and therefore divorced, shall afterwards Marry, and by begetting of Children shew himself not to be impotent, but apt for Generation, this Man is to be taken from his second Woman, and returned to his first Wife, and the Woman for whose Marriage a Nullity was pronounced in respect of the Insufficiency of her Mate, must be now taken from her second Companion, and returned to the first. Of this the Reason is apparent, *quia decepta est Ecclesia*, they adjudged him to be impotent upon wrong Information, whom Experience and Truth hath declared to be potent. And what Man can foretel, how variety of Times may produce other Judgments. There may be Question of Land or Inheritance, of Legitimation or Illegitimation; and a wife
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And the Lady HOWARD. 123

Man would be unwilling to bring it on the Stage when he is dead and gone, and to make it the Fable of the World, whether his Children be born lawfully, or to be reputed in the Rank of Bastards. The World is subject to much mutability, and Judges of future Times may peradventure be led with the Power of some great Persons, and perhaps may think upon other Considerations, that it is but a Conceit, that a Man should be potent unto another Woman, and impotent to his Wife; or that the Common-Law doth not know any *Maleficium*, or that they do not believe, that there may be *latens impedimentum perpetuum*, and *incurabile versus hanc*, when they see that the Husband is in shew of the World, a lusty, able Man, and hath well proved his Potency, by begetting Three, or Five, or Seven, or Ten Children upon another Woman. These are pretty Things, if a Man do well consider them, and will serve to make distraction between Kinsman and Kinsman, and make work for the Lawyers, and keep the Courts at *Westminster* that they shall not be idle; which if we could not learn otherwise, yet *Bury's Case* before remembred doth teach us, who was divorced from his Wife in the 3d or 4th Year of Queen *Elizabeth*, and when his Brother had enjoyed his Land until the 40th Year of the said Queen, then was he thrust out of it, and

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the question'd Son, or his Heir, was put into Possession of it by Trial of Law; a great deal of Money being spent in that Contention, and both Civilians and common Lawyers in great Numbers were entertain'd of both Sides; and yet the Controversy was not so appeased, but that of my certain Knowledge, within these three Years it had been raised again, and a strong device was laid how to bring this about again; only my self withstood it, and would not give way unto it, when I was divers Times consulted thereabout; conceiving very well, that it would not be long before some Prohibition would come out of some of the King's Courts, because the common Law disliked, that Mens Inheritance, especially after Judgments, should be disturbed, when the Parties whom most of all it concerned, are dead long before, and cannot answer for themselves; whereas, peradventure, if themselves had been living, they could have answer'd that for themselves which other Men know not. And there ought to be a settled Course in all Things appertaining to Inheritance.

By this Time, I hope you see, that it is not out of willfulness, or prejudicate Conceit, that I have impugned this Nullity, but out of ground of Reason, and out of scruple of Conscience, which is it that must accuse me, or excuse me, before the ever-living

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living God. I know you have heard what other Men have said, and they have answered for themselves. Upon all which Grounds I make this Conclusion, That howsoever this Matter of Separation with great earnestness hath been persued, yet it is the surer and the safer way to leave it as we find it, and in no Case to dissolve it. I oft remember that Saying, which is frequent among the Canonists; *Tolerabilius est aliquos contra statuta hominum dimittere copulatos, quam conjunctos legitime contra statuta Domini separare.* That concerneth us who be the Judges, and for the Parties themselves, who perhaps can be content to be severed, and to Marry elsewhere, let them know this from me, that they may best expect a Blessing from God when they live in that State where fewest scruples shall arise in their Mind: From which, whether they shall be free in leaving their old Conjunction, and betaking themselves unto a new, I refer to their wiser Thoughts, wherein all probability, if any cross or thwart shall arise in their new intended Matrimony, this perplexity and anguish will still follow their Souls, that they have done that, whereof in their truest Meditations they have no ground of Conscience, and therefore that it is the Hand of God upon them, who giveth not a Blessing unto that which was unduly sought.

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You have thus at large heard my Opinion against the annullation of this Marriage. Now, if you ask me, what would you then have done concerning this Couple of noble Personages : my Answer is, that I would have a Reconciliation by all means to be laboured ; and although that be difficult to bring about, yet it is the more Honour when it is effected. Charity will forgive, and forget the highest Offences. It is St. *Augustine's* Judgment, *That in the greatest Breaches between Man and Wife, Reconciliation is the best ; and the worthiest Pains that can be bestow'd, is to bring that about.* There wanteth only one or more good Mediators, and then great Things will be compassed. The disagreement was inconceivable between God and Man, yet Christ, that great Mediator, did take it away. The Breach was very bitter between *England* and *Spain*, yet our most blest Sovereign, as a gracious Intercessor, did give an end unto it. Let Divines be used now, as much as Lawyers have been used heretofore. Take the godly Counsel of the one, which will be given freely, as you have taken the Advice of the other with much expence of Money. This I wish for, this I pray for, and if my Counsel had been used, before Things grew to this height, I would have used my best means to have wrought an Atonement. But because there is no hope thereof, and
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this doth expect a legal Decision, proceed you that please unto this Separation. Give your Sentence in *scriptis*, as you have declared your Opinion in *verbis*. Five might have served the turn by the Words of the Commission, if seven had dissented, but you have seven Suffrages, and therefore proceed ; only this I crave of the Register, that he do make his Act, that this Sentence is given, *Joanne Episcopo London, D. Joanne Bennet milite, D. Francisco James, D. Thoma Edwards dissentientibus, potissimum verò Georgio Archiepiscopo Cantuariensi renitente.*



This is the Substance of that Matter which the Archbishop of *Canterbury*, out of certain Notes which he had drawn up, was ready to have uttered, and no one material Point is added thereunto, as appeareth unto me, the Writer hereof, comparing it with the Notes at such Time as I ended the writing of this, which was on the 28th of *September 1613.* three Days after the Time when it should have been spoken.

The KING's Letter to the Archbishop of Canterbury.

My Lord,

AFTER I had received, and read
 your Papers, which the Bishop
 of *Litchfield* brought me, I found
 it very necessary that I should
 make answer thereunto at my first lei-
 sure; for whereas, before, at my last meet-
 ing with you, ye seemed to me to be only
 as yet unresolved what Sentence to give in
 this Business, till you had heard it thoroughly
 disputed, that by that means ye might be
 fully inform'd of the State of the Cause:
 it appears now by these Papers, that you
 have, after your last Days consultation, put
 on a negative Resolution, grounded upon
 Fundaments of Divinity and Conscience,
 as you think, which hath mov'd me to send
 you here with my Judgment upon your Ar-
 guments, in regard that I did ever hold it
 necessary, that in a Matter of this Weight
 all my Commissioners should be as near of
 one Mind, as might be, and therefore I
 would be sorry that your private Conceits
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should so blind your Judgment, as to make you and your Followers draw the * Catharrows against your Yoke fellows; for, that I may now open plainly my Heart unto you, at my first reading of your Papers from the Bishop, I chance to cast mine Eye first upon the Paper of your Arguments, before I had looked upon your Letter, and lighting upon your first Words, *In as much as we do firmly believe*, &c. I protest I thought it had been some strange Confession of Faith, that you had intercepted amongst some of the Sectaries; but when I had read out the rest of that first Article, God is my Judge, I thought that Paper had been some Pasquil made against this Divorce, which coming to your hands ye had sent me, and therefore without reading any farther therein, I looked upon your Letter, which resolv'd me of all these Doubts; but after that I had fully perused, and rightly consider'd of all your Papers, I found your Principles so strange, and your Doubts so far sought, that I thought it necessary, as I have already said, to set down unto you my Observations upon them. But to conclude my Letter with that plainness that becometh one of my Quality, I must freely confess, that I find the Grounds of your Opposition so weak, as I have reason to apprehend, that the Prejudice you

* *Perplex or torment.*

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have of the Persons, is the greatest Motive of breeding these Doubts into you ; which Prejudice is the most dangerous Thing that can fall in a Judge for misleading of his Mind. And the Reason moving me to this Apprehension, is partly grounded upon your last Words to me at your parting from *Windsor*, and partly upon a Line scrap'd out in your Paper of Doubts, for I am sure you think me not so blunt a Secretary, but that I can read a Line so scraped out. In your last Speeches with me, you remember you told me what Assurance you had of the Earl's Ability out of his own Mouth, which you said you could not but trust, because he was so religious a Nobleman. But when I told you of the other Party's contrary Affirmation, you remember how you used the Word of Iniquity, and how far your interlined Line seems to have a Harmony with this Word, your self can best judge. Now then, if I would ask you what Proof you have of the one's Religion more than the other's, you must answer me, by judging upon the Exterior; and how deceivable that Guess is, daily experience teaches us: But with a holy Protestation that I never knew any Thing but good in the young Earl. Was not this the Ground of Master *Robert Bruse's* Incredulity, because he knew the Earl of *Gowry* to be truly Religious ; and did not beg a Register. *Bothwell* in his Preface of his Book

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And the Lady HOWARD. 131

De viris Illustribus. And as for your Judgment of the other Party, *Christ's Precept* is the best Answer unto you, *nolite judicare.* But if the Question were to judge of the Earl's Inclination, whether is it likely that you or I could best judge of it; I, he having been bred with my late Son, and serv'd him so long; or you, that never spoke with him but once or twice in your Life, and never knew either good or evil of him but out of his own Mouth. I will conclude therefore, with inverting the Argument; that if a Judge should have a Prejudice in respect of Persons, it should become you rather, to have a kind of Faith implicit, in my Judgment, as well in respect of some Skill I have in Divinity? as also that I hope no honest Man doubts of the uprightness of my Conscience; and the best thankfulness that you that are so far my Creature, can use towards me, is, to reverence, and follow my Judgment, and not to contradict it, except where you may demonstrate unto me that I am mistaken, or wrong informed, and so farewell,




























JAMES R.

The



The LIBEL promoted by
the Lady FRANCES HOW-
ARD, against ROBERT, Earl
of *Essex*, before the King's
Delegates, Authorized under
the Broad Seal. *Ann. 1613. viz.*

GEORGE, *Archbishop of Canterbury*;
JOHN, *Bishop of London*; LAN-
CELOT, *Bishop of Ely*; RI-
CHARD, *Bishop of Litchfield and*
Coventry; Sir JULIUS CÆSAR,
L. L. D. Sir THOMAS PARREY,
L. L. D. Sir DANIEL DUNN,
L. L. D. JOHN BENNET, *L. L. D.*
FRANCIS JAMES, *L. L. D.* THO-
MAS EDWARDS, *L. L. D.*

I.      FIRST, that she, and Ro-
     bert, Earl of *Essex*, were
     married by publick Rites
     and Ceremonies of the
     Church, on the 5th Day
of *January, 1606.*

II. That

II. That she at that time was full Thirteen Years old, and is at this present, about Twenty Two, or Twenty Three.

III. That the foresaid *Robert*, at the time of the pretended Marriage, was about Fourteen Years old, and is at this present, about Twenty Three or Twenty Four; and at that time and ever since, and at this present, is a Man (as far forth as a Man can judge) and hath been in good Health and perfect Estate of Body, not any way hindred by any *Ague* or Sicknes, but that he might have carnal Copulation with a Woman.

IV. That since the pretended Marriage; at least by the Space of whole and continue Three Years, after the said *Robert* had fully attained to the Age of Eighteen Years, as Time and Place did serve, after the fashion of other married Couples, the said *Frances Howard*, in hope of lawful Issue, and that she might be made a Mother, lived together with the said *Robert* at Bed and Board, and lay both naked and alone in the same Bed, as married Folks use; and desirous to be made a Mother from time to time, again and again, yielded her self wholly to his Power, and as much as lay in her, offer'd her self, and her Body

134 *The CASE of the E. of ESSEX,*
dy to be known, and earnestly sought and
desired Conjunction and Copulation.

V. And also the said Earl in the afore-
said time, very often, again and again, did
try to have carnal Copulation, as with his
lawful Wife, which she refused not, but
used the best Means she could; notwith-
standing all this, the said Earl could never
carnally know her, nor have that Copula-
tion in any sort which the married Bed
alloweth.

VI. Yet before the said pretended Mar-
riage, and since the said Earl hath had, and
hath Power, and Ability of Body, to deal
with other Women, and to know them car-
nally, and sometimes hath felt the Motion,
and Prick of the Flesh, tending to carnal
Copulation, as he saith and believeth, and
peradventure truly; but by a perpetual,
and natural Impediment, hath been hin-
dred all the former time, and is at this
present, that he can have no Dealing or
Copulation with the foresaid Lady
Frances.

VII. Furthermore, the said Lady *Fran-*
ces hath been, and is a Woman fit and a-
ble to have Copulation with a Man, and
such an one, as may be carnally known,
neither hath in this regard any Impedi-
ment,

VIII. More-

VIII. Moreover the said Lady *Frances* remaineth, and is at this present a Virgin.

IX. Besides, at the time of the pretended Marriage, the said Lady *Frances* was utterly ignorant and unacquainted with the said Earl's Unability, and Impediments formerly mentioned.

X. Also the foresaid Earl long before this Suit commenced, hath very often, and at sundry times confessed in good Earnest, before Witnesses of Credit, and his Friends and Kinsfolk, that although he did greatly desire, and did his best Endeavours, yet he never could, nor at this present, can have carnal Copulation with the said Lady *Frances*, no not once.

XI. Lastly, in regard of Womanish Modesty, the said Lady *Frances* hath concealed all the former Matters, and had a Purpose for ever to conceal them, if she had not been forced by false Rumours of her Disobedience to the foresaid Earl to reveal them. She requireth, that since this pretended Matrimony is but in *facto*, and not in Right, it may be pronounced, declared, and adjudged as void, and of no Force, and that she may be freed, and quit from
all

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all Bonds and Knots of the same, by your
Sentence and Authority.



The Earl of ESSEX replieth, July 5,
1614.

I. **H**E answereth to the First and Se-
II. **H**cond Articles Affirmatively.

III. He thinketh that at the time of his Marriage, he was full Fourteen Years old, and is now Twenty Two and upwards, neither since hath had, or now hath any Sick-ness or Impediment to hinder him, but that he might have had carnal Knowledge of a Woman, save in the time of his Sick-ness of the *Small Pox*, for two or three Years after his Marriage, which continued a Month or six Weeks, and that at another time, when he had some Fits of an *Ague*.

IV. He affirmeth, that for one Year, he divers times attempted, and that the two other Years he did lie in Bed most commonly with her, but felt no Motion or Provocation, and therefore attempted nothing. The first Year, when he was willing, sometimes she shewed her self ready, some other times refused.

V. He

V. He saith, he never carnally knew her, neither found he any Defect in himself; but confesseth that he was not able to penetrate into her Womb, nor enjoy her.

VI. He believeth, that before and after the Marriage he hath had an Ability of Body to know any other Woman, and hath often times felt Motions and Pricking of the Flesh, tending to carnal Copulation; but for perpetual and natural Impediments towards the Lady *Frances*, he knows not what the Words mean; but that he hath lain by her Two or Three Years now last past, and had no Motion to have carnal Copulation with her, and believeth he never shall.

VII. He believeth not that the said Lady *Frances* is a Woman apt and fit for carnal Copulation, because he hath not found it.

VIII. IX. He believeth to be true.

X. He believeth, that once, before some Witnesses of good Credit, he did speak to this purpose; That he had often times endeavour'd carnally to know her, but that he did not, nor could not.

DOUBTS

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DOUBTS conceived out of the Fact and Process, in the Suit between the Lady FRANCES HOWARD, and the Earl of Essex.

I. WHETHER the Libel be defective, especially in the Fourth Article, where it is said, that *Dominus Comes Essex pluribus & iteratis vicibus* (which may be verified and satisfied in two or three times) *dictam dominam Franciscam ejus uxorem prætersam cognoscere tentavit, &c.*

II. Whether the Answer of my Lord of Essex, to the said Fourth Article in that Behalf, being but thus, (*that he did divers times attempt, &c.*) be full, certain, and sufficient.

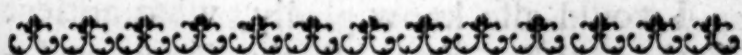
III. Whether in this Case my Lord of Essex his Oath (*cum Septem manu propinquorum*) be not by Law requisite as well as my Ladies.

IV. Whether my Lord of Essex should be inspected by Physicians, to certify (so far as they can by Art) the true Cause and Nature of the Impediment.

V. Whe-

V. Whether by triennial Co-habitation, there having been no carnal Copulation between them, (*Impedimentum malefici*, being accidental) *presumatur præcessisse vel potius subsequutum fuisse matrimonium, contractum & solemnizatum.*

VI. Whether they ought *post præceptum Judicis* (notwithstanding their triennial Co-habitation before the Suit began) to co-habit together, *saltem per aliquod temporis spatium arbitrio Judicis moderandum*, for farther Trial, &c.



*The Lord Archbishop of Canterbury's
Reasons against the Nullity.*

IN as much as we do firmly believe, that the Scripture directly, or by Consequence doth contain in it sufficient Matter to decide all Controversies, especially in things appertaining to the Church ; and that Marriage amongst Christians can be no less accounted than a sacred Thing, as being instituted by God in Paradise, honoured by the Presence of our Saviour himself, declared by St. Paul, to be a Figure of the Spiritual Conjunction between Christ and his

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his Church ; I would be glad to know, by what Text of Scripture, either of the Old or New Testament, a Man may have a Warrant to make a Nullity of Marriage, solemnly celebrated in *facie Ecclesie propter maleficium versus hanc* ; which I do the rather ask, because I find Warrant expressly in Scripture, to make a Nullity of Marriage, *propter frigiditatem*, by the Words of our Saviour, *Mat. 19. 12. For there are some chaste, or Eunuchs, which were so born of their Mother's Belly ; and there be some chaste, which be made chaste by Men ; and there be some chaste, which have made themselves chaste for the Kingdom of Heaven.*

I would also know gladly, what antient Father, either amongst the Greeks or Latins, by Occasion of Interpretation of Scripture; or any Disputation, hath mentioned, *Maleficium versus hanc*, or declared it to be a Cause of Nullity in Marriage.

The like I demand touching the antient Councils, either general or provincial, and concerning the Stories Ecclesiastical, whether any such Matter be to be found in them.

If for ought that appeareth, never mention was made of this, till the time of *Hincmerus Episcopus Rbemensis*, who lived Nine Hundred Years after Christ ; it may well be conceived that this was a Concomitant of Darknes and Popish Superstition, which about that time, grew to so great an Height,
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And the Lady HOWARD. 145

God permitting then the Punishment to fall upon the Children of Unbelief.

But since the Light of the Gospel is now in so great Measure broken out again, why should I not hope; but those who have embraced the Gospel, should be free from this *Maleficium*? especially since amongst a Million of Men in our Age, there is not one found in all our Country, who is clearly and evidently known to be troubled with the same. And if there should be any that might seem to be thus molested, we are taught to use two Remedies against it; the one spiritual Physick, the other external.

For the first, our Saviour said, *Hoc genus dæmoniorum non ejicetur nisi per orationem & jejunium.* And St. Peter speaking of the Devil, *Cui resistite firmi in fide*: And the Canonists themselves prescribe Alms, Fasting, and Prayer, to be used in that Case; but that they joyn superstitiously their Exorcisms thereunto. And for corporal Physick to be applied as against a Disease; it is the Judgment of our late Divines, whether they speak of *Maleficium* or not.

Now admit the Earl of *Essex* might be imagined to be troubled with *Maleficium* *versus hanc*, I demand what Alms have been given? What fasting hath been used, what Prayers have been pour'd out to appease the Indignation of God towards him, or his Wife, or what Physick hath been taken,
or

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or Medicine applied for Eight Years together? Not one of these things ; but the first Hearing must be, to pronounce a Nullity in the Marriage. Of which Declaration we know the Beginning, but no mortal Man's Wit can foresee the End either in his Person, or the Example.

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**TESTIMONIES** *produced by the Archbishop, for his Opinion.*

**Judicium Philippi Melancthonis de Divortiis ex impotentia in loco de conjugio ; quod Chr. Pezelius suis in Melancthonis examen exemplificationibus inferuit, Secunda Parte.**

**P**ersonæ quæ sunt idoneæ ad commixtionem conjugalem nequaquam fiunt conjuges, sed cum explorata est frigiditas, Judex pronunciet illas Personas liberas esse. Nec fit tunc divortium, quia non erat conjugium juxta dictum, Mat. 19. sed fit declaratio, ut alii sciant, illam societatem non esse conjugium, & personæ quæ habet naturæ vires integras, concedi aliam feliciorem copulationem legitimam. Sed ad explorandam frigiditatem Jura tempus constituunt, si res dubia est, ne ante triennium fiat se junctio. Eodem modo pronunciant de iis in quibus natura ita læsa est facino aut veneficio,

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ut ope medica sanari non possit, si toto triennio frustra tentata est medicatio.

Tanta autem est virtus aliquarum mulierum, ut occultent imbecillitatem virorum, sicuti viri doctissimi Simonis Grynei soror narravit, se, mortua prima conjuge, duxisse viduam virginem, quæ undecem annos nupta fuerit viro frigido, nec unquam ulli ante mortem viri hanc rem patefecit. Hæc Melancthon in locis: Loco de conjugio, quæ Christophorus Pezelius suis in Melancthonis examen explicationibus inseruit, & eis adjecit hanc annotationem. Impotentia alia naturalis, alia accidentaria est. Naturalis, cum quis natura non est idoneus ad commixtionem conjugalem. Accidentale, cum quis est castratus, aut veneficio corruptus. Rursus quæ ex veneficio accedit impotentia, aut curari potest medicamentis, aut est perpetua. Ex his distinctionibus sumitur explicatio questionis, An, & quomodo impotentia sit causa divortii. Nam inter impotentes, non potest constare conjugium, quia deest causa sufficiens & finalis. Primum, si persona illa quæ sana est, decepta fuit, & ignorans duxit impotentem, non igitur potuit esse consensus, qui est causa efficiens Matrimonii. Secundo duplex est finis conjugii, unus est generatio sobolis, sicut dicitur, Crescite & Multiplicamini: Alter finis est Vitatio confusionis libidinum, juxta dictum: Vitandæ fornicationis causa unusquisq; habeat uxorem. Hæc Pezelius 2 parte Explicat: in Examen Melancthon.

He-

**Hemingii Judicium lib. de Conjugio,  
Repudiis & Divortiis. Professoris  
Theol. in Academ.**

**I**nhabilitas corporum ad usum matrimonii divortii causa est, & nonnunquam fascino & veneficio adeo inhabiles reduntur viri, ut nunquam sanari possint. Sed plura sunt iudicii perpendenda, antequam divortii sententiam seras. Primum, an impotentia præcesseret Nuptias. Secundum, an sit subsecuta Nuptias. Tertium, an sit curabilis. Quartum, an ejus rei mulier conscia fuerit ante Nuptias. Si præcesserit Nuptias, potest liberari persona sana divortium petens, non enim fuit verum conjugium, siquidem non legitime consentiunt, cum unus fallit, alter errat, fallit impotens, errat potens. Cum ergo Deus nec fallacium nec errorem probat, non est dicendus eos conjunxisse. Proinde Judex, si intellexerit ex probationibus incurabile esse vitium, mox declarabit suo testimonio, non fuisse Matrimonium; verum si spes sit curationis, triennium statuatur, in quo patienter expectetur curatio, quæ si frustra tentata fuerit, Judex pronuntiabit Conjugium nullam fuisse.

Si subsecutum est vitium post nuptias & complexum maritalem conjugum, nullo pacto permittendum est divortium: fortuna enim as-

sticta,



*fiicta, si absit culpa, patienter in conjugio ferenda est. Si alter fuerit conscius infirmitatis, alterius ante nuptias, cogantur simul habitare, & alia officia sibi mutuo præstare : nam persona conscia vitii alterius absque dubio fraudem meditata est, quæ fraus non debet illi prodesse, si postea divortium petat. Hæc Hemingius libello de Conjugio, Repudio, & Divortio.*



Polani Professoris Theol. nuper in Academia Basiliensi Judicium.

**C**onjugium inire possunt, qui non sunt natura vel arte spadones, aut quibus natura non est læsa fascino aut veneficio. Tales enim persone nequaquam fiunt conjuges. Idæo etiam nuptiis celebratis cum trienni spatio explorata est spadonis frigiditas, aut toto triennio tentate est natura læsa medicatio, judex pronunciare potest illas personas liberas esse, Polanus lib. 10. Syntag. c. 53.

\* Arcularii nuper Professoris  
Theol. in Academia Mar-  
purgensi Judicium.

\* Sive  
Trenla-  
vii.

**I**Nter personas quæ propter frigiditatem ali-  
umve naturæ vitium ad usum conjugii sunt  
ineptæ, cum non sit conjugium, teste Christo,  
Mat. 19. divortium hic locum habere poterit.  
Si quæ igitur personam talem alteri jungi con-  
tingat, judex, explorata frigiditate aut na-  
tura vitio, utramque personam liberam pronun-  
ciabit. Porro ad explorandam frigiditatem  
jura triennii tempus præscribunt, præsertim si  
res dubia sit. Idem judicium est de eis quorum  
natura vel fascino vel veneficio ita sit læsa, ut  
ad conjugii usum reddanter inepti; & omnem  
medicorum operam intra triennium inanem fu-  
erint experti. Hæc Arcularius in arcu fœ-  
deris, cap. 28.

~~~~~

Bezæ Judicium in lib. de Divortiis.

SPonsalia cum personis paralyti immedicabili,
quæ corpus prorsus enervavit, frigiditate
insanabili, genitalium partium privatione, vel
adeo insigni læsione, ut perpetua coitus impoten-
tia

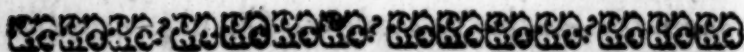
ita necessario consequatur, affectis, contracta prorsus inutilia sunt, cum ad matrimonium à Deo vocati videri non possint, qui fidem in sponsalibus datam prestare, naturali objecto vitio nequeunt, Quod si sponsalibus factis, conjugio tamen nondum reipsa consummato, ejusmodi malum supervenerit, sentio ejusmodi sponsalia, veluti Deo ipso jubente, dirimenda, ut, quid objecto perpetua impedimento, palam demonstret sibi istiusmodi sponsalia non placere. Beza lib. de Divort. & Repud. pag. 91. Genev. 1591. impress.

Atque hanc suam doctrinam Beza multis ex sacrae Scripturae testimoniis probat: sed tantum pag. 94. ei duas cautiones adjecit. Primam, si frigidus postea convaleuit, repetere priorum uxorem, errore, viz. Separatam oportet, etiamsi alteri postea esset conjuncta: secundum cautionem, recto omnino in istiusmodi controversiis constitutum est: ne quod videlicet fieret quod postea mutari sine magno offendiculo non posset, ut triennium saltem ab ipso copulationis, i. e. ducta uxoris die expectaretur, priusquam isti morbi insanabiles esse, & sponsalia conjugave dirimenda pronunciarentur. Hoc autem omnino de iis vitiis accipiendum est quae per se non patent. Nam alioqui, ut in erectione, vel si quis natura vitio, testibus aut genitali membro careat, quorsum ultimum temporis intervallum?

Zanchii Judicium in lib. 4. de Operibus Dei, cap. 3. non tamen impotentiam ex veneficio attigit.

Quemadmodum Beza, sic nec Zanchius impotentiam ex veneficio attigit, sed tantum docet, quosdam esse casus, quibus matrimonia in ipsa ecclesia benedicta nulla sint, & subinde hæc exempla subjungit. Si cum eo contrahitur, qui vir non erat, sed spado, aut propter perpetuum ei insanabilem morbum, officium conjugis præstare nullo modo potest. Hæc Zanchius, lib. 4. de Op. Dei, cap. 3. sed illam nec scriptura testimoniis nec rationibus confirmat.

*Non eadem sentire bonos de rebus eisdem,
Incolumi licuit semper amicitia.*



His Majesty's Answer to the Archbishop's Reasons.

TO the first Article, that the Scripture directly, or by Consequence, doth contain sufficient Matter to decide all
Con-

Controversies, especially in Things appertaining to the Church ; this, in my Opinion, is *propositio erronea*, and one of the Puritans Grounds, without a better Distinction or Explanation. For the Orthodox Proposition is, That the Scripture doth directly, or by Consequence, contain in it self sufficient Matter to decide all Controversies in Points of Faith and Salvation ; of which sort a Nullity in Marriage cannot be accounted for one ; and therefore your Consequence upon the former Proposition must fail.

For farther Satisfaction to your former Question, I say, Your own Second Question doth answer it : For if there be a Warrant in Scripture for pronouncing a Nullity, *propter frigiditatem*, then all the Means, which may make him *frigidus versus hanc*, must be comprehended therein. For why doth our Church justly condemn as incestuous, the Marriage of a Man with his Sister's Daughter, or the Marriage of Two Sisters, but *à paritate rationis* ? for none of them is in *terminis* prohibited by the Scripture, only the Conclusion is gather'd *à paritate rationis*. For if it be not lawful to marry your Father's Wife, because thereby you discover your Father's Shame ; nor his Sister, because she is his Kinswoman ; nor your own Sister, because thereby you discover your Father and Mother's Shame :

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It can no more be lawful to marry your Sister's Daughter; for thereby you also discover your own Shame. As also that the same Reason serves for ascending or descending, in Points of Consanguinity, *quia par est ratio*. The like is in this Case, for altho' Christ spake only of Three sorts of Eunuchs, yet *ratio est quia non potest esse copula inter eunuchum & mulierem*; and therefore St. Paul, in the 6th of the *Corinthians*, telleth us clearly, That it is no *Conjunction sine copula*: I conclude therefore, *a paritate rationis*, That Christ did comprehend under those Three sorts of Eunuchs, all Inability, which did perpetually hinder *copulam versus hanc*, whether it were natural or accidental. For what Difference is there betwixt cutting off of the Hand, and being made impotent thereof? *Amputatio & mutilatio membri*, is all one in the Civil Law, and it is alike defrauding of the Woman, when either he who is to be her Husband is gelded, or when the Use of that Member towards her is by any unlawful Means taken from him. Neither is it any way needful to crave the particular Warrant of Nullity, *propter maleficium*, out of the Scripture, no more than there is Warrant in that Place for any Nullity at all. For Christ doth not directly say, That a Marriage so made shall be null; neither doth he teach us what Form of Process shall be

be used in it ; neither maketh he mention of a triennial Probation, no more than he forbiddeth Marriage within the Fourth Degree, without Leave obtained of the Bishop of the Diocess. It is therefore sufficient to all moderate Christians, to be taught out of the Word, That Marriage is null *sine copula*, and that the Word *Quos Deus conjunxit*, is never found in the Scripture, where *Erunt eis carne una* doth not precede, (viz. *They shall be one Flesh*). But whether the Impediment be universal, or *versus hanc* only, and whether the Fault thereof have been born with him, or done to him by Violence, or fallen by Disease, or by Disproportion, or Ineptitude betwixt the Parties, or by unlawful or unnatural Practices, it is ever *par ratio* : He is *Eunuchus versus hanc* ; for he ought to be *Eunuchus versus omnes alias*, seeing to her only he was married ; and therefore *a paritate rationis*, such Nullities are grounded upon the aforesaid Warrant of Scripture ; neither had Christ then any Occasion to speak to the Jews concerning *Maleficium* ; for as it is apparent, that God made King *Abimelech* and his Family unable to abuse *Sarah*, *Abraham's* Wife ; and so was he made by God himself *Eunuchus versus hanc* : is it not improbable, that the Devil, being God's Ape, should imitate God's Work by his filthy Witchcraft, by making such as God

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will permit him, *inhabile versus banc*, tho' it may be, that it was long after that time, before the Devil put that Trick in use upon the Earth.

As to your Third and Fourth Questions, What mention the Fathers and Councils make of *Maleficium versus banc*? First, I answer, That it may be, if they be well searched, that either something to this purpose shall be found in them; or at least *aliquid analogum*, which, *a paritate rationis*, or by Consequence, may serve to decide this Question. But leaving this to the Search, my main Answer is, That we must distinguish of Times. For in all the first Ages, as long as Persecution lay heavy upon the Church, and before that the Emperors became Christians, the Church did not meddle with Questions of Marriage; for the Civil Judges determined them, who would not suffer the Church to meddle with any thing which drew a Consequence after it of Possessions, and Inheritance, as Marriage doth. Nay, even divers hundred Years after the Conversion of the Emperors, the Judgment and Decisions of all such Questions did still remain *in foro Civili*, till the Popedom began to wax great, and assume, or rather usurp to her self a Power of supreme or independent Judicatory in all Ecclesiastical Causes: And therefore the Fathers and Councils
had

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had no Occasion to make mention of that which was not *eorum fori* at that time. And besides that, it is an evil Argument to say, that such a thing is unlawful, because the Fathers, and first Councils make no mention of it. For you know much better than I, that divers main Points in Controversy betwixt the Papists and us, are never mention'd by the Fathers, because they could never have dreamt that such Questions would arise; and therefore we only find the Fathers exact in such Questions, as were most agitated, and, upon the Stage in their Time; as, *De Trinitate: de duabus in Christo Naturis*, and such like. It is therefore sufficient, that there can be nothing found in them, which may be justly understood to contradict this Opinion; and it is very probable (as I said before) that this Trick of *Maleficium* had not then been put in practise in the World, and therefore not known, nor mentioned by them; for why may not the Devil find out as well new Tricks of Witchcraft, when God will permit him, as he doth daily new sorts of Heresies? for his Malice can never end, till the End of Times.

To your Fifth Argument, my former Answer doth also serve. For till the Nine Hundredth Year of God, it may be that that devilish Trick came never to be discovered, and you know the old Proverb,

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Ex malis moribus bonæ leges, and it is not unlikely that that Time of Darkness gave the Devil occasion of devising of such new Tricks. Look my *Demonology*, and yet was that Law, for which you cite *Hincmarus Episcopus Rhemensis*, made by Charles the Great, who in many great Points, as you know, had so great Light, as I dare scarcely term his Time a Time of Blindness. But how great and palpable soever that Darkness was in Points of Superstition, I will still maintain it, as I have ever done, That for Matter of Order and Policy, all the World shall never be able to find out any other so good, and so old an Order of Government to be put in the Place of it. In sign whereof, there is no well governed Commonwealth in the Christian World, where the Canon Law is not received to judge in Questions of that Nature ; and it is certain, that this Question in Hand is only a Question of Order and Policy ; for the Grounds of this Question, *That the essential Point of Matrimony cannot be accomplished, sine copula*, is warranted by express Scripture, and confessed by your self.

To your Sixth Argument, or rather Hope ; I fear that Hope shall prove contrary to Faith. For as sure as God is, there be Devils, and Devils must have some Power, and their Power is in this World, (for *Satan* is the Prince of this World :)
 Nei-

Nei-

And the Lady HOWARD. 155

Neither are the Elect exempted from his Power; *Job* was not; *St. Paul* was not: *Christ* saith to all his Disciples, *Cribravit vos Satanas*. And if the Devil hath any Power over the Elect, it is over their Flesh; and if over the Flesh, rather over the flesh-est, and most sinful part thereof; whereunto original Sin is so tyed, as God, both before and under the Law, to shew the Difficulty of purging Man's original Sin, ordained the Amputation of the Fore-skin of that Member. And to exempt those of our Profession from the Power of Witchcraft, is a Paradox never yet maintained by any learned, or wise Man. That the Devil's Power is not so universally unbridled amongst us, that I freely confess, but that it is totally restrained, *quoad nos*, how then was a Minister of *Geneva* bewitched to Death? And how are the Witches daily punished by our Laws? Surely if they can harm none but the Papists, we are too charitable to labour for avenging them only. *Satan* is permitted to punish Man as well for the Breach of the Second, as the First Table; and thereof are we no less guilty than the Papists are. And if the Power of Witchcraft may reach to our Life, how much more to a Member? especially to a Member so governed by the Fantasie, wherein the Devil hath his principal Operation, and he may so estrange the Husband's Affe-

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Affection from the Wife, as he cannot be able to perform that Duty unto her. For it is a common Thing in many Mens Nature, that they cannot do that Act but where they Love, nor Fight but when they are Angry. God keep us therefore from putting the Trial of our Profession upon Miracles; let the Miracle-mongers live by their own Trade.

To your Seventh Argument touching the Remedies, what do you know whether both Parties, or either of them, have used both those Remedies or not? And that that spiritual Remedy of Fasting and Prayer should be used publicly for them, I can see no necessity. For *non interest Reipublica nec Ecclesia*. And private Persons are commanded to use their Fasting and Alms secretly, and in private; besides, that no such Remedy or Cure is likely to succeed well, except the Parties own Heart and Desire be set upon it.

And as for your Conclusion upon the *incommodum*, either in these Persons, or in the Example, I can see none in either; for as to this Couple (betwixt whom Marriage was never truly accomplished) they will peradventure both of them by the declaratory of this Nullity, be made capable to accomplish lawful Marriage with others, (which they could not do betwixt themselves) wherein they may live to the satisfaction

faction of their Hearts, and enjoy the Blessing of Procreation of Children. And as to the Example, the Law shall be fulfilled by due Administration of Justice, which cannot serve for an Example or Precedent of counterfeited Nullities in Time to come; for, *notoritas facti*, or rather *non facti*, is *lucē clariorie* in this Case. Besides the many legal Probations and Confessions of the Parties, which have been taken in this Process; whereas by the contrary, if they shall be forcibly kept together, their Names, or Shadows may well be kept together, but never their Persons or Affections; and they shall be forced to live either in perpetual Misery and Scandal, or both: And what such a forced Continency can avail, the Monks Continency can teach us. And for a Precedent in Time to come, it can reach no farther, than to open a Way of lawful Relief for any Parties who shall chance to be distressed in that sort. *Hac est mea sententia.*

2. And as for the Extract of our late Divines Opinions upon this Question, I confess, I cannot guess what your Intent was in sending them unto me; for they all agree *in terminis* with my Opinion, That there is such a Thing as *Maleficiati versus hanc*; and your very interlined Passages prove it clearliest. As for their Advice concerning the Remedies, that is, *Consili-*
um,

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um, non jus, nec decretum ; not imposing a Necessity ; but is to be used by Discretion, as Occasion shall serve, or require it.

1. As for the legal Doubts of Formality, they concern none of your Calling. If your Conscience be resolved in the Points of Divinity, it is your part to give your Consent to the Nullity, and let the Lawyers take the Burthen of making it formal.

And as for the triennial Probation, I hope no Man can be so blind as to make a double triennial, both *ante & post litem contestatam*. And in Conclusion, our new Divines Solution of this Question proveth clearly, that their Resolution upon this Doubt, (howsoever it was first conceiv'd in Blindness, as you think) yet it is now approved in the Time of the greatest Light, and Purity of the Profession of the Gospel.

To conclude then, if this may satisfy your Doubts, I will end with our Saviour's Words to St. Peter, *Et cum conversus eris, confirma fratres tuos*. But I must add, *Vel (si opus fuerit) converte fratres tuos*. For on my Conscience, all the Doubts I have yet seen made in this Business, are nothing but *nodos in scirpo querere*.

The Midwives appointed to make Inspection upon the Lady's Body, gave in, That the Lady *Essex* is a Woman apt to have Copulation, and to bring forth Children, and that

that the said Lady is a Virgin and uncorrupted.

Three Ladies affirm, That they believe the same, for that they were present when the Midwives made the Inspection, and did see them give good Reasons for it.

After these Matters were summed up, there was a Sentence of Divorce given for the Nullity of the Marriage, and both Parties licensed to be married again.

The Commissioners who gave Sentence in the Lady *Essex's* behalf were,

Winchester,

Ely,

Litchfield and *Co-W*

ventry,

Rocheſter,

Bishops.

Sir Julius Caesar,

Sir Thomas Parry,

Sir Daniel Dun,

Doctors of Law.

The Commissioners Dissenting.

Archbishop of *Canterbury,*

Bishop of *London.*

Sir John Bennet,

Francis James,

Thomas Edwards,

Doctors of Law.

The

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*The Copy of the Divorce, drawn up
in this Form, which followeth.*

‘ **I**T is by these Presents declared, That
‘ whereas *Robert Earl of Essex*, and
‘ the Lady *Frances Howard*, contracted by
‘ Shew of Marriage, did co-habit in one
‘ House, and lie together in one Bed, *nudus cum nuda*, and *solus cum sola*; and
‘ that the said Lady *Frances* did shew her
‘ self prompt, ready to be known of him;
‘ and that the said Earl neither did, nor
‘ could have Knowledge of her, although
‘ he did think himself able to have Know-
‘ ledge of other Women. And that the
‘ said Lady *Frances*, by Inspection of her
‘ Body by Midwives, expert in matter of
‘ Marriage, was prov’d to be apt for carnal
‘ Copulation with Man, and yet a Virgin.
‘ Therefore we the said Judges deputed in
‘ the Cause, first invoking the Name of
‘ Christ, and setting God before our Eyes,
‘ do Pronounce, Decree, and Declare,
‘ That the Earl of *Essex*, for some secret,
‘ incurable, binding Impediment, did ne-
‘ ver carnally know, or was, or is able
‘ carnally to know, the Lady *Frances How-*
‘ *ard*, and therefore we do Pronounce, have
‘ Decreed, and do Declare, the preten-
‘ ded Marriage, so contracted and solem-
‘ niz’d,

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‘ niz’d, *de facto*, between them, to have
 ‘ been, and to be utterly void, and to no
 ‘ effect ; and that they did want, and ought
 ‘ to want the Strength of the Law ; and
 ‘ that the Lady *Frances* was, and is, and so
 ‘ ought to be free and at Liberty, from any
 ‘ Bond of such pretended Marriage, *de facto*,
 ‘ contracted and solemniz’d. And we do
 ‘ pronounce, That she ought to be Divor-
 ‘ ced, and so we do Free and Diverce her ;
 ‘ leaving them, as touching other Marria-
 ‘ ges, to their Conscience in the Lord.
 ‘ Which our definitive Sentence and De-
 ‘ cree, we here Ratify and Publish.

Winchester,

Ely,

Litchfield and Co-

ventry,

Rocheſter,



Bishops.

Sir Julius Cæſar,

Sir Thomas Parry,

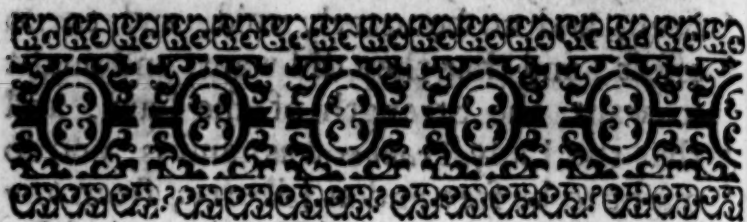
Sir Daniel Dun,



Doctors of Law.

The Earl of *Northampton* immediately
 haſten’d to Court, with the News of this
Divorce ; and it was ſoon ſpread all over the
 Kingdom. The Earl of *Effex*, in a great
 Diſcontent, left the Court, and repair’d to
 his Seat in *Warwickſhire*, near *Drayton*, and
 there lived a private Life.

An



An Account of the Intrigue
between ROBERT CAR, Earl
of Somerset, Viscount Roche-
ster, &c. and the Lady FRAN-
CES HOWARD, An. Reg. 10.
An. Christi, 1612.

By ARTHUR WILSON, Esq;

AMONG all our Historians,
Mr. Wilson, in his Life of
King James the First, re-
lates this Affair with the
most Exactness; and † as he
has given us a more full and
particular Account of these Passages between
the Earl of Essex, his Lady, and the Favourite

† See the Notes upon King James's Reign, in the Col-
lection of the History of England, Vol. 2. pag. 687.

And the Lady HOWARD. 163

Car; so he was best qualified to do it, being an intimate Bosom Acquaintance of the Earl, from his Youth to his Death. But if any unusual Warmth be observed in his manner of relating them, it must be attributed to his Zeal for the Honour of his Patron.

Having thus given the Motives that might in some measure sway Mr. Wilson in the Earl's behalf, I shall now produce his own Words, leaving the whole to the Reader's Judgment.

' The Treasurer * Cecil, Earl of Salis-
' bury, that great Engine of the State, by
' whom all Wheels moved, held an inti-
' mate Correspondence with the House of
' Suffolk, which he had strenghtned with an
' Alliance; marrying his eldest Son, the
' Lord Cranborn, to Katherine, the eldest
' Daughter of that Family. And being
' mindful of the Asperity and Sharpness
' that was betwixt him and the late Earl of
' Essex, he thought it a good Act of Policy
' and Piety, not to suffer Malice to become
' Hereditary, and therefore he was a great
' means in marrying the young Earl of
' Essex to the Lady Frances Howard, ano-
' ther of those Sisters, that the Father's
' Enmity might be closed up by the Son's

* See Mr. Wilson's History of King James I. pag.
686. & seq.

' Nup-

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‘ Nuptial Fraternity. The Earl of *Essex*
‘ was Fourteen Years of Age, and she
‘ Thirteen, when they married; too young
‘ to consider, but old enough to consent :
‘ Yet, by the Advice of Friends, separated
‘ after Marriage, she under her Mother’s
‘ Wing, and he visiting *France* and *Germa-*
‘ *ny*, till Time should mature and ripen a
‘ happy Co-union. The Court was her
‘ Nest, her Father being Lord Chamber-
‘ lain; and she was hatch’d up by her Mo-
‘ ther, whom the fowr Breath of that Age
‘ (how justly I know not) had already taint-
‘ ed; from whom the young Lady might
‘ take such a Tincture, that Ease, Great-
‘ ness, and Court Glories, would more di-
‘ stain and impress on her, than any way
‘ wear out and diminish: and growing to
‘ be a Beauty of the greatest Magnitude in
‘ that Horizon, was an Object fit for Ad-
‘ mirers, and every Tongue grew an Ora-
‘ tor at that Shrine.

‘ The Prince of *Wales*, now in his Puber-
‘ ty, sent many loving Glances, as Amba-
‘ sadors of his good Respects; and amo-
‘ rous Expressions are fit Subjects for jealous
‘ Reproaches to work on. Her Husband
‘ having been now Three or Four Years
‘ beyond the Seas (sick with Absence from
‘ her whom his Desires longed after) came
‘ over again, and found that Beauty, which
‘ he had left innocent, so faded and so-

‘ phisti.

And the Lady HOWARD. 165

phisticated with some Court-Drug which
had wrought upon her, that he became
the greatest Stranger at Home. His Pa-
tience made way for him a while, and
he bore up with a gentle Gale against the
Stream of this Woman's Affections, which
ran altogether (unknown to him) into
another Channel. Nor was her Reputa-
tion yet become so robust (being of a ten-
der Growth) to strike his Ears with Re-
proaches; and therefore he imputed her
sly Entertainments to a Maiden Bashful-
ness; till surfeited with that dull Potion,
(upon better Advice) he went to the
Earl of *Suffolk* (her Father) and deman-
ded his Wife, thinking himself capable
to enjoy both her and her Love. The
Father, that thought there had been an
Intimacy betwixt them suitable to their
Conjugal Knot, made use of his paternal
Power to reduce his Daughter to the Obe-
dience of a Wife. But while these things
were struggling for, a most violent Dis-
ease, of a poisonous Nature, imputed to,
but far transcending, the Small-Pox, sei-
zed on the Earl of *Effex*; and had not
the Strength of Youth, and that Almight-
y Power that orders all Things, wrought
out the Venom of it, the Earth (as pro-
bable wish'd by her) had been his Mar-
riage-Bed.

For

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For this Lady being taken with the
growing Fortunes of *Robert Carr*, Viscount
Rochester, and grounding more Hope
upon him than the uncertain and hope-
less Love of the Prince, she cast her An-
chor there, which the Prince soon dis-
cover'd, and slighted her accordingly.
For dancing one time among the Ladies,
and her Glove falling down, it was taken
up, and presented to him, by one that
thought he did him acceptable Service;
but the Prince refus'd to receive it, say-
ing publickly, He would not have it, it
is stretch'd by another, meaning the Vis-
count: This was an Aggravation of Ha-
tred betwixt the King's Son, and the King's
Friend.

The Countess of *Essex* having her Heart
alienated from her Husband, and set up-
on the Viscount, had a double Task to
undergo, for accomplishing her Ends:
One was, to hinder her Husband from
enjoying her; the other was, to make the
Viscount sure unto her: For dishonest
Love is most full of Jealousy. Her Hus-
band she look'd upon as a private Person,
and to be carried by him into the Coun-
try, out of her Element (being ambitio-
us of Glory, and a Beauty covetous of
Applause) were to close (as she thought)
with an insufferable Torment; though he
was a Man that did not only every way
merit

merit her Love, but he lov'd her with an extraordinary Affection, having a gentle, mild, and courteous Disposition, especially to Women, such as might win upon the roughest Natures. But this fiery Heat of his Wife's, mounted upon the Wings of Lust, or Love, (call it what you will) carried her after so much Mischief, that those that saw her Face, might challenge Nature of too much Hypocrisy, for harbouring so wicked a Heart under so sweet and bewitching a Countenance.

To strengthen her Designs, she finds out one of her own Stamp, Mrs. Turner, a Doctor of Physick's Widow, a Woman whom Prodigality and Looseness had brought low; yet her Pride would make her fly any Pitch, rather than fall into the Jaws of Want. These Two consult together, how they may stop the Current of the Earl's Affection towards his Wife, and make a clear Passage for the Viscount in the Place. To effect which, one Doctor Forman, a reputed Conjuror (living at Lambeth) is found out: The Women declare to him their Grievances; he promises sudden Help; and to amuse them, frames many little Pictures of Brass and Wax, some like the Viscount and Countess, whom he must unite and strengthen; others like the Earl of Essex, whom he must

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' must debilitate and weaken; and then,
 ' with philtrous Powders, and such Drugs,
 ' he works upon their Persons. And to
 ' practise what Effects his Art would pro-
 ' duce, Mrs. Turner, that lov'd Sir *Arthur*
 ' *Manwaring* (a Gentleman then attending
 ' the Prince) and willing to keep him to
 ' her, gave him some of the Powder, which
 ' wrought so violently with him, that,
 ' through a Storm of Rain and Thunder,
 ' he rode Fifteen Miles one dark Night to
 ' her House, scarce knowing where he was
 ' till he was there. *Such is the devilish and*
 ' *mad Rage of Lust, heighten'd with Art and*
 ' *Fancy.*

' These Things matur'd and ripen'd by
 ' the Cunning of this Juggler *Forman*, gave
 ' them Assurance of happy Hopes. Her
 ' courtly Invitements, that drew the Vis-
 ' count to observe her, she imputed to the
 ' Operation of those Drugs he had tasted;
 ' and that Harshness, and stubborn Com-
 ' portment she expressed to her Husband,
 ' making him (weary of such Entertain-
 ' ments) to absent himself, she thought,
 ' proceeded from the Effects of those un-
 ' known Potions and Powders, that were ad-
 ' ministr'd to him: So apt is the Imagina-
 ' tion to take Impression of those Things
 ' we are willing to believe.

' The good Earl finding his Wife nours'd
 ' in the Court, and seeing no Possibility to
 ' reduce

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‘ reduce her to Reason, till she were estran-
‘ ged from the Relish and Taste of the
‘ Delights she suck’d in there, made his
‘ Condition again known to her Father.
‘ The old Man being troubled with his
‘ Daughter’s Disobedience, imbitter’d her,
‘ being near him, with wearisome and con-
‘ tinual Chidings, to wean her from the
‘ Sweets she doated on, and with much
‘ ado, forc’d her into the Country. But
‘ how harsh was the parting, being rent a-
‘ way from the Place where she grew and
‘ flourish’d ? Yet she left all her Engines
‘ and Imps behind her ; the old Doctor,
‘ and his Confederate, Mrs. *Turner*, must
‘ be her two Supporters : she blazons all
‘ her Miseries to them at her Departure, and
‘ moistens the way with her Tears. *Chart-*
‘ *ley* was an hundred Miles from her Hap-
‘ piness, and a little Time thus lost is her
‘ Eternity. When she came thither (tho’
‘ in the pleasantest Time of Summer) she
‘ shut herself up in her Chamber, not suf-
‘ fering a Beam of Light to peep upon her
‘ dark Thoughts ; if she stirr’d out of her
‘ Chamber, it was in the Dead of Night,
‘ when Sleep had taken Possession of all
‘ others but those about her. In this im-
‘ placable, sad, discontented Humour, she
‘ continued some Months, always mur-
‘ muring against, but never giving the least
‘ civil Respect to her Husband ; which the
‘ good

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‘ good Man suffer’d patiently, being loath
 ‘ to be the Divulger of his own Misery :
 ‘ Yet having a manly Courage, he would
 ‘ sometimes break into a little Passion, to
 ‘ see himself slighted and neglected by him-
 ‘ self ; but having never found better from
 ‘ her, it was the easier to bear with her.

‘ While she was at *Charley*, she writ to
 ‘ her Confederates, That her Husband found
 ‘ little Operation in their Drugs, complaining
 ‘ of his Lustiness, and her Misery : For (she
 ‘ said) the Viscount would never love her, if
 ‘ her Husband did meddle with her, which
 ‘ with Difficulty she yet impeded ; but how long
 ‘ she should resist his Violence, she knew not :
 ‘ therefore she implor’d their Assistance, if they
 ‘ would not see her the most despicable Crea-
 ‘ ture in the World : and for Satisfaction, they
 ‘ should make their own Price. With this
 ‘ kind of Stuff she fill’d her Letters, which
 ‘ were after found in *Forman’s* Closet. These
 ‘ Instigations made him active ; and the
 ‘ Man being skilful in Natural Magick,
 ‘ did use all the Artifice his Subtilty could
 ‘ devise, really to imbecillitate the Earl ;
 ‘ for no Linnen came near his Body, that
 ‘ was not rinsed with their Camphire
 ‘ Compositions, and other faint and wast-
 ‘ ing Ingredients ; and all inward Appli-
 ‘ cations were foisted on him by corrup-
 ‘ ted Servants, to lessen and debilitate the
 ‘ Seminal Operations : which *Veneficium*

is

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is one great part of Witchcraft, destructive to Nature, and horribly abominable to be practis'd. And this in time wrought such Effects upon his Person, that he found himself unable with her, tho' she permitted him; yet when he had been from her some reasonable Time, to renovate his Spirits, by shaking off those artificial Applications, then his Abilities made her unwilling and refractory. Tho' some are of Opinion, that he was not much debilitated, but that she got (by her virtuous Agents) an Artifice too immodest to be express'd, to hinder Penetration. And thus she tormented him, till he was contented to let her steer her own Course, which after run her on Ground.

For coming to *London* next Winter with this full Sail, loaden with Lust, she found the Viscount much prepar'd for her; who being at first fasten'd on the Object, Absence, and all those little Artifices that mischievous Women and cunning Impostures could devise, had advanced him as much in his Desires, as they had hinder'd the other. We could dispute the Nature of these Operations, how far they are contingent, and how the Fancy works with them, though ignorant of them, making their Impulsions more active, being the Sparks that kin-

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“ die this combustible Matter ; for we will
 “ never allow there was any other diabo-
 “ lical Means used, Nature being strong
 “ enough for such a Production ; but being
 “ not pertinent to the Story, will leave it,
 “ and follow them that found the Effects of
 “ it, and had Affections suitable to it, which
 “ they made use of with an unbridled Ap-
 “ petite, yet meeting closely in Corners,
 “ (Sin being at first shame-fac’d) but after-
 “ wards they grew more bold ; and every
 “ Hour that the Viscount could steal from
 “ his Royal Master, he dedicated it to his
 “ disloyal Mistress: Being caught in this
 “ Net of Adulation, he becomes a willing
 “ Prisoner ; Lust only getting Liberty to
 “ all Looseness and Licentiousness: Places
 “ of frequent Meetings are daily renew’d ;
 “ Persons fitted for such Practices are em-
 “ ploy’d ; and when Nature was exhaust-
 “ ed, Art, her subtle Imitator, brought in
 “ her Store to contribute new Spirits,
 “ purchased at any Rate. All outward Ad-
 “ornment, to present Beauty in her full
 “ Glory, were not wanting on both sides,
 “ being Lust’s Fuel, which tended to the
 “ Consumption of all Reason : And among
 “ the rest, yellow Starch, the Invention
 “ and Foil of Jaundice Complexions, with
 “ great cut-work Bands, and Piccadillies,
 “ (a Thing that hath since lost the Name)
 “ crouded in and flourish’d among us, Mrs.

“ *Turner*

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‘ *Turner* being nominated to be the first
‘ Contriver, happily in *England*, but the
‘ Original came out from *France* ; which
‘ Fashion and Colour did set off their lean-
‘ and fallow Countenances. Thus did the
‘ Viscount get the Conquest of Two, the
‘ King, and this Lady, but could not sub-
‘ due his own lustful Appetite.

‘ However, the King’s Affections were
‘ not so monopoliz’d, but that his crafty
‘ Servant the Earl of *Salisbury*, had a good
‘ Hole, as well in his Councils, as Treas-
‘ ure ; and being not well pleas’d to see
‘ himself bearded by a Youth, new started
‘ into the Affairs of the World, and moun-
‘ ted by the Wing of Love, not of Merit,
‘ he cast out many Mists before him, to
‘ hinder and damp his Passage so, that the
‘ Viscount could not rise to that Pitch du-
‘ ring his Life, that he afterwards arriv’d
‘ at.

‘ On the 6th Day of *November*, Death
‘ depriv’d us of the King’s eldest Son,
‘ Prince *Henry*, a Prince as eminent in No-
‘ bleness as in Blood, and having a Spirit
‘ too full of Life and Splendor, to be long
‘ shrouded in a Cloud of Flesh.

‘ *Anno* 1613. The Viscount *Rochester*
‘ all this while, tho’ plung’d in Lust, was
‘ held up by the Chin in the Glories of the
‘ Court ; and the Prince (that interposed
‘ betwixt him and the Beams of Ma-
‘ jesty)

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' jesty) being remov'd, the Earl of *Salis-*
 ' *bury* (another Obstacle) dying six Months
 ' after the Prince, in the Way from the
 ' *Bath*; he now took full Possession of the
 ' King's Favours alone. He executes the
 ' Place of Principal Secretary, receiving
 ' all Pacquets, and dispatching Answers
 ' without the Knowledge of the King or
 ' Council; or if the King did know, his
 ' Love had hoarded up such a Confidence
 ' in him, as he laid all out upon that Stock.
 ' *Rochester's* greatest Assistant was a pri-
 ' vate Gentleman, one Sir *Thomas Over-*
 ' *bury*, by whose Compass he steer'd his
 ' Course, who (being a Man of Parts and
 ' Abilities) had wrought upon the Vis-
 ' count so, as not only to keep him in, and
 ' close with the King, but to make him
 ' capable of managing the highest Affairs,
 ' if he had kept himself within the Circle
 ' drawn to his Hand. This Intimacy be-
 ' twixt them, spake *Overbury* an Actor in
 ' all his Privacies. And when he under-
 ' stood by the Viscount his Intention of
 ' Marriage with the Countess of *Essex*, he
 ' oppos'd it with all the powerful Argu-
 ' ments he could use: For tho' he might
 ' be so active, in his Initiation of Favour
 ' with the Viscount, to be Assistant to his
 ' Pleasures, and for carrying forward some
 ' of his dark Contrivances (those Secreta-
 ' ries being always the greatest Favou-
 ' rites)

rites) yet having now gotten good Foot-
ing in his Affection, and building his For-
tune thereon, his Reason might tell him,
there could be nothing more destructive
to both their growing Hopes, than to lay
a Foundation upon so much publick In-
justice, as to marry another Man's Wife,
her Husband living; therefore he pas-
sionately perswaded him to cast his
Thoughts upon a more honourable Ob-
ject, and not one, whose Disloyalty (in
her present Condition) was so much
branded with Infamy, that the Marks of
it would be visible on his Face. But the
Viscount, bewitched with the Entice-
ments of his Soul-ravishing Mistress (un-
capable of good Counsel) doth not only
call home his Affections from *Overbury*,
that had been long Leiger with him,
(denouncing Enmity) but incites his Be-
loved against him also; who mustering
up all her Passions, with the greatest A-
crimony, that a feminine Malice could
devise, she never left, till she had dis-
charg'd all the Vollies of her Rage upon
him. And the better to do it, she con-
sults with her Uncle, the Earl of *North-*
ampton, aggravating *Overbury's* Offence,
as tending to the Dishonour of their
whole Family: That he (a petty Fellow)
should dare to raise such Scandals against
her Innocency. The Earl of *North-*
I 4 *ampton,*

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ampton, that knew of the Endearments
 betwixt the Viscount and his Niece (so
 base and mercenary was his Spirit)
 thought it good Policy to stop all Passa-
 ges, that it might not come into the pub-
 lick Mouth ; for being in a Sphere elated
 above others, it was a Sin of a high Pre-
 sumption, for any of an inferiour Orb to
 move but in its own Place, or meddle with
 what is above them. He therefore closes
 with the Viscount (whom in his flattering
 Acclamations by Letters, he makes a lit-
 tle Deity) and after some Dispute of the
 manner how to be revenged of *Overbury*,
 they conclude to dispatch him by Poison,
 which could not be done so well in a pub-
 lick way ; and therefore they subtilly
 contrive to exasperate the King against
 him, that being a Prisoner, and shackled
 by them to a Place, he might be a more
 settled Mark for their envenom'd Ar-
 rows.

About the same Time, the King think-
 ing fit to send an Ambassador into *Flan-
 ders*, to the Arch-Duke (some say, into
France) the Viscount recommended Sir
Thomas Overbury to the King for that
 Service (extolling his Abilities and Fit-
 ness for the same, publicly, that more
 Notice might be taken of the Affront) and
 the King made choice of him for that
 Employment. Which done, the Vis-
 count

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‘ count (under the Shadow of Friendship)
‘ imparts to *Overbury*, what Intentions the
‘ King had towards him ; but he thought
‘ it would not be so convenient for him to
‘ accept of it, because he should not only
‘ lose his Converse and Company by such
‘ an Alienation (which he highly valued)
‘ but many a fair Opportunity of impro-
‘ ving his Respects to him, in some better
‘ way of Advancement. *Overbury* had
‘ not been so little a Courtier, or a Man of
‘ so mean Reason, but that he was sensible
‘ what Displeasure he should pull upon
‘ himself, by refusing the King’s Com-
‘ mands : and therefore he told the Vis-
‘ count, that betwixt the King’s Favours,
‘ and his Friendship, he had a great Con-
‘ flict in his Spirit, being willing to retain
‘ both ; but how he should refuse the
‘ King’s Commands with Safety, he knew
‘ not. But the Viscount, with fair Pro-
‘ mises, prevail’d with him to set up his
‘ Rest at home, upon higher Expectation,
‘ (such a sweet Bait is Ambition !) pro-
‘ testing to take off the Asperity of the
‘ King’s Anger from him, and smooth his
‘ Way so, as should be for his better Ad-
‘ vantage. When he had wrought *Over-*
‘ *bury* in this Forge, he goes to the King,
‘ and blows the Fire, incensing him with
‘ all the Aggravations he could ; so that
‘ the poor Gentleman, for his Contempt,

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‘ was forthwith committed to the *Tower*;
 ‘ And to prepare all things for his Reception
 ‘ there, Sir *William Wade*, the late
 ‘ Lieutenant, was remov’d, and Sir *Jervis*
 ‘ *Ellovis*, a Person more ambitious than indig-
 ‘ ent (having made his way by Money,
 ‘ the common Merit) was admitted to the
 ‘ Place.

‘ Now the Countess, like another *Alce-*
 ‘ *sto*, drove furiously, her Chariot having
 ‘ two Wheels, which ran over all Impedi-
 ‘ ments: One was, to sue a Divorce be-
 ‘ twixt her and her Husband, that she
 ‘ might marry the Viscount: The other
 ‘ was, to take away *Overbury*, the Blemish
 ‘ in her Eye, and that laid such a Stain
 ‘ upon her, that nothing but his Blood
 ‘ could expiate. For these she hath several
 ‘ Engines; the one must be acted O-
 ‘ vertly, the other Covertly, in dark Cor-
 ‘ ners; and she and her Agents find fit
 ‘ Ministers for both.

‘ The Earl of *Northampton* resenting his
 ‘ Niece’s Grievances, makes the King ac-
 ‘ quainted with her Maiden Bashfulness,
 ‘ how loath she is to divulge her Husband’s
 ‘ Infirmities, and how long it is since her
 ‘ Marriage, and yet she hath not enjoyed
 ‘ the Happiness of a Wife; that her Hus-
 ‘ band’s Inability must needs be an unna-
 ‘ tural Conjunction, such as neither Law
 ‘ nor Reason can admit of; and that there
 ‘ was

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‘ was a great Affection betwixt the Viscount
‘ and her, so as there seem’d to be a more
‘ excellent Sympathy, and sweet Composi-
‘ tion of Soul in them, more suitable to Rea-
‘ son and Nature, than in the State she was
‘ in : which was seconded by the Viscount’s
‘ humble Submissions to the King’s great
‘ Wisdom, who (he acknowledg’d) had not
‘ only rais’d him to what he is, but may
‘ yet make him more happy, by uniting
‘ him to a Lady of so much Honour and
‘ Virtue.

‘ The King, that took Delight to com-
‘ pleat the Happiness of them he lov’d,
‘ commanded the Bishops to sue out a Di-
‘ vorce between the Earl of *Essex* and his
‘ Lady, that the Viscount might marry her :
‘ for he had been practis’d formerly in *Scot-*
‘ *land*, in his Minority, with the like Expe-
‘ riment : *Elizabeth*, Daughter to the Earl
‘ of *Arbol*, being married to the Earl of
‘ *March*, under Pretence of Impotency, but
‘ merely for Lust (as the † Author reports)
‘ was divorced from her Husband, and mar-
‘ ried to the Earl of *Arran* (the King’s Fa-
‘ vourite) who had been before a Partner
‘ in her adulterous Sheets (so current is
‘ the Parallel, and so equally are Lust and
‘ Ambition yoked together, that they both,

† *Vide Johnston’s History of Scotland.*

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‘ with full Violence, draw one and the
‘ same way).

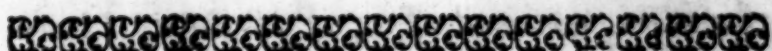
‘ The Bishops and others, having a Com-
‘ mission under the Great Seal of *England*,
‘ to convene the Earl of *Essex*, and his
‘ Countess before them, sent out their Sum-
‘ mons, and they made their Appearance
‘ accordingly. But before they proceeded,
‘ they caused a Jury of Twelve discreet
‘ Matrons to be impannell’d, to search the
‘ Countess, whether she were (as she pre-
‘ tended to be, and was reputed) a Maid
‘ still ; for if she were a Maid, they could
‘ fasten upon a Nullity, and so separate
‘ them for the more Honour of her Virgi-
‘ nity. The Countess being ashamed, and
‘ bashful, to come to such a Tryal, would
‘ not expose her Face to the Light ; but
‘ being to appear before the Matrons under
‘ a Veil, another * young Gentlewoman,
‘ that had less offended, was fobbed into
‘ the Place ; and she passed, in the Opini-
‘ on, both of Jury and Judges, to be a Vir-
‘ gin.

‘ These Bishops, and the rest of the
‘ Judges, could not be ignorant what scan-
‘ dalous Reports of this Lady’s Actions flew
‘ up and down from Lip to Lip ; which,

* Said to be one of Sir Thomas Monson’s Daughters,
for the Countess was reported to have had a Child in the
Earl’s Absence,

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‘ however sweeten’d by the Partakers, car-
‘ ried an ill Savour with them in every ho-
‘ nest Understanding, who were not blind-
‘ ed with Wilfulness, or deafned with Pre-
‘ judice, which made the Bishops of *Canter-*
‘ *bury* and *London* decline the Business, tho’
‘ nominated in the Patent. But Kings will
‘ never want fit Ministers in corrupted
‘ Times, both in Church and Common-
‘ wealth, as long as there are Degrees and
‘ Places of Ascent to climb to: And tho’
‘ these Things floated a while upon the
‘ Streams of Greatness, yet there is one A-
‘ bove that moves the Waters, who did not
‘ only see what pass’d in the Bishop’s Palace,
‘ but in the closest Prison, which he disco-
‘ ver’d to the Shame and Ruin of the Actors.



*The Countess’s Attempts against the
Earl, by Sorcery.*

THE Earl of *Essex* being a Gentleman
of the fairest Character, and univer-
sally belov’d, he, out of the natural Sweet-
ness of his Temper, took frequent Occasions
of admonishing his Lady against those E-
vils which common Fame loaded her with.
But she being averse towards him, and pur-
suing with all her might the Bent of her la-
scivi-

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scivious Inclinations, was deaf to his kind Intreaties, and privately conspir'd his Destruction after the following manner.

She became acquainted with one Mrs. Turner, a Woman of a vicious Character from her Youth, and who encourag'd her in her wicked Purposes against the Earl, by consenting to poison him, which they attempted; but their execrable Design not taking Effect, the Countess writ thus to Mrs. Turner.

Sweet Turner,

AS thou hast been hitherto, so art thou all my Hopes of Good in this World: My Lord is as lusty as ever he was, and has complain'd to my Brother Howard, that he hath not lain with me, nor us'd me as his Wife: this makes me mad, since of all Men, I loath him, as the only Obstacle and Hindrance, that I shall never enjoy him whom I love.

Yours, &c.

FRANCES ESSEX:

The Earl having escaped this Plot, the Hatred of the Countess still increas'd towards him, and drew her headlong into her own Destruction. He perceiving himself less regarded, gives her fresh Advice, endeavouring, if possible, to reclaim her, which she not in the least regarded, but grew

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grew more enrag'd, and in a great Fury she takes her Coach, and repairs to Mrs. *Turner*, who was ready to assist in any evil Act; accordingly they repaired to one Dr. *Forman* at *Lambeth*, who was skill'd in the Magic Art; him they fee'd to join with them, who tried many Devices to bewitch the Earl: all which failing, at last they framed a waxen Image, and got a Thorn from a Tree that bore Leaves, and stuck them upon the *Privities* of the said Image, by which means they accomplished their Desire.

This being done according to her Expectation, she repairs to her House at *Chartley*, and thither the Earl comes to her. But whether the Earl was more lusty than she expected, or what other Accident happened, it is unknown; nevertheless she grew jealous of her Acts, and falls into a great Fear that all their Labour was lost; whereupon she wrote a Letter to Dr. *Forman* to this Effect, viz.

Sweet Father!

Altho' I found you ready at all Times to further me, yet must I still crave your Help; wherefore I beseech you, that you keep the Doors close, and that you still retain the Lord with me, and his Affection towards me; I have no Cause but to be confident in you; altho' the World be against me, yet Heaven fails me not; many are the Troubles I sustain; the Doggedness
of

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of my Lord, the Crossness of mine Enemies,
and the Subversions of my Fortunes, unless you
by your Wisdom do deliver me out of the midst
of this Wilderness, which I intreat for God's
sake.

From Chartley.

Your Affectionate Daughter,

FRANCES ESSEX.

This Letter coming to the Hands of the old Master, procures a new Attempt, and now he goes and inchants a Nutmeg, and a Letter, one to be given the Viscount in his Drink, the other to be sent to him as a Present: these Things being accomplished, he not long after died, leaving behind him some of those Letters, whereby the Countess had Intercourse with him, in his Pocket, which gave some light into the Business, among which this aforesaid Letter was one.

Dr. *Forman* being dead, Mrs. *Turner* wanted one to assist her; whereupon, at the Countess's coming to *London*, one *Gresham* was nominated to be entertained in this Business, and in process of Time was wholly interested in it.

The Countess, upon her Return, sends Gratulations to the Viscount, and with those

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those the Letter sent her by Dr. *Forman* ; he reads it, and the more he reads it, the more he is entangled, for no Man knows the Myſteries that are contain'd in evil Arts, and who can withſtand the Miſchiefs that are in evil Tongues ? Whereupon he returns Answer, and new Places of meeting are aſſign'd, amongſt the reſt, one at *Hammerſmith* : in the mean Time the Viſcount makes diſpatch of his Buſineſs, leaves things half done, half undone, to the intent he might meet her, who had there ſtay'd for his coming above Two Hours, and being met, they ſolemnly ſaluted each other, fell into divers Diſcourſes, and inſinuating *Phraſes*, from *Words* to *Deeds*, and from *ſpeak- ing* to *acting* the Sin of Venery.

The Counteſs having obtained that ſhe deſired, and the Viſcount caught in the Net of Adulation, the more he ſtriveth to be looſe, is caught the faſter ; ſo that Luſt having by this means got liberty, being cover'd with Greatneſs, like a Fire concealed in a Pile of rotten Wood, burſt forth in all Loofneſs and Licentiousneſs. Places of more frequent, and private Meetings are concluded upon between them ; Perſons fitting for their purpoſes being acquainted with their Proceedings, Watch-words are given ; all Things having relation to a certain end, make them the *bolder*, and more ſafely to accompliſh that which both Time and Memory

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mory cannot demonstrate in former Histories; now these good Parts, which seemed heretofore to be hopeful in the Viscount, consume to Cinders, and the Corruption remains to brand him in the Forehead for his *evil living*; his Modesty becomes eclipsed, his Behaviour light, his Carriage unseemly; in his Place nothing so costly; no Attire so uncouth, but at all Costs and Charges he obtains it for the Increase of Favour; new Fashions are produced, that so he might shew more beautiful and fair, and that his Favour and Personage might be made manifest to the World; and to this purpose *yellow Bands, dusted Hair, curled, crisped, frizled, slicked Skins, open'd Breasts*, beyond accustomed Modesty, with many other inordinate Attires, were worn on both sides to the Shew of the World; so that for the Increase of dishonest Appetites, they were abundantly practised; surfeiting thus upon their *Pleasure*, having been before accustomed unto Hardiness, causeth him to fall into all manner of Forgetfulness, letting all Things go to wrack, careless in Attendance, neglecting *State Affairs*, ignorant of his own Worth, subjecting himself to the lustful Appetite of an evil Woman; accounting no Time well spent, nor Hour deem'd so happy, as when *Dalliance* and pleasant Discourses pass between them, either in Words or Writing.

Time

Time could no longer conceal these secret Meetings, but at length the Marriage of the Viscount and Countess were brought to light, which when made publick, every one declaimed against her, but extoll'd the Earl of *Essex*; however, an Order was forthwith sent to him to repay her Portion of 5000 *l.* to do which he was forced to sell part of his Estate, thereunto willingly consenting, that he might get rid of her. The King nevertheless continues his Favour to the Viscount, and install'd him Earl of *Somerset*. But at last the joint Wickedness of all these Accomplices broke out in the Murder of *Overbury*, upon which Occasion, the following Letters found in Dr. *Forman's* Closet after his Death, were produc'd in Court at Mrs. *Turner's* Arraignment, by the Doctor's Widow.

The Countess's LETTER to Mrs. *Turner*, to procure an Enchantment for turning the *Viscount's* Affections towards her.

Sweet *Turner*,

I Am out of all hope of any good in this World, for my Father, my Mother, and my Brother said I should lie with him, and my Brother *Howard* was here, and said, He would not come from this Place all Winter, so that
all

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all Comfort is gone, and, which is worst of all, my Lord hath complained, that he hath not lain with me, and I would not suffer him to use me; my Father and Mother are angry, but I had rather dye a thousand times over; for besides the Sufferings, I shall lose his Love; if I lie with him, I will never desire to see his Face; and if my Lord do that unto me. My Lord is very well as ever he was, so as you may see in what a miserable Case I am. You must send the Party word of all; he sent me word all should be well; but I shall not be so happy, as the Lord to love me. As you have taken Pains all this while for me, so now do all you can; for never so unhappy as now, for I am not able to endure the Miseries that are coming to me, but I cannot be happy so long as this Man liveth; therefore pray for me, for I have need: but I should be better if I had your Company to ease my Mind, let him know this ill News: If I can get this done, you shall have as much Money as you can demand; this is fair play.

Your Sister,

FRANCES ESSEX.

Burn this Letter.

A Letter from the Countess to Dr. Forman.

Sweet Father,

I Must still crave your Love, altho' I hope I have it, and shall deserve it better hereafter:

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ter : remember the Galls, for I fear, tho' I have yet no Cause but to be confident in you ; yet I desire to have it as it is yet remaining well, so continue it still, if it be possible ; and if you can you must send me some good Fortune : alas ! I have need of it : Keep the Lord still to me, for that I desire ; and be careful you name me not to any body, for we have so many Spies, that you must use all your Wits, and all little enough, for the World is against me, and the Heavens favour me not. Only happy in your Love ; I hope you will do me good, and if I be ungrateful, let all Mischiefe come unto me. My Lord is lusty and merry, and drinketh with his Men ; and all the Content he gives me, is to abuse me, and use me as doggedly as before. I think I shall never be happy in this World, because he hinders my good, and will ever, I think so ; Remember (I beg for God's sake) and get me from this vile Place.

Your affectionate, loving Daughter,

FRANCES ESSEX.

Give Turner warning of all Things, but not the Lord ; I would not have any Thing come out, for fear of my Lord Treasurer ; for so they may tell my Father and Mother, and fill their Ears full of Noise.

There

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There were also shewed in Court certain Pictures of a Man and Woman in Copulation, made in Lead, as also the Mould of Brass, wherein they were cast, a black Scarf also full of white Crosses, which Mrs. *Turner* had in her Custody; at the shewing of these, and enchanted Papers, and other Pictures in Court, there was heard a Crack from the Scaffolds, which caused great Fear, Tumult, and Confusion among the Spectators, and throughout the Hall, every one fearing hurt, as if the Devil had been present, and grown angry to have his Workmanship shewed, by such as were not his own Scholars; and this Terror coming, about a Quarter of an Hour after Silence proclaimed, the rest of the cunning Tricks were likewise shewed.

Dr. *Forman's* Wife being Administratrix of her Husband, found Letters in Packets, by which much was discovered; she was in Court, and deposed that Mrs. *Turner* came to her House immediately after her Husband's Death, and did demand certain Pictures which were in her Husband's Study; namely, one Picture in Wax, very sumptuously apparelled in Silks and Sattens, as also one other sitting in form of a naked Woman, spreading, and laying forth her Hair in a Looking-glass, which Mrs. *Turner* did confidently affirm to be in a Box, and that she knew in what Part or Room of the Study they were.

Mrs.

And the Lady HOWARD. 191

Mrs. *Forman* further deposeth, that Mrs. *Turner* and her Husband would besometimes three or four Hours locked up in his Study together. She did depose further, that her Husband had a Ring would open like a Watch.

There was also a Note shewed in Court, made by Dr. *Forman*, and written in Parchment, signifying what Ladies loved what Lords in the Court, but the Lord Chief Justice would not suffer it to be read openly in the Court.

Mrs. *Turner* sent *Margaret*, her Maid, to Mrs. *Forman*, and wished that all such Letters and Papers as concerned the Earl of *Somerset*, or the Countess of *Essex*, or any other great Personages, should be burned, telling her that the Council's Warrant should come to search the Study, and that all his Goods might be seized; whereupon she and her Maid *Margaret*, with the Consent of Mrs. *Forman*, burnt divers Letters and Papers, but yet she kept some without their Privy.

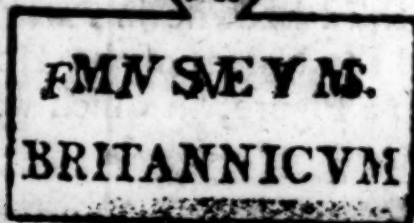
There were also Inchantments shewed in Court, written in *Parchment*, wherein were contained all the Names of the Blessed Trinity, mentioned in the Scriptures; and in another Parchment, $\div B. \div C. \div D. \div E.$ and in a third likewise in *Parchment* were written all the Names of the Holy Trinity; as also a Figure, in which was written
this

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this Word, *Corpus*, and upon the Parchment was fastned a little piece of the Skin of a Man.

In some of these Parchments, the Devils had particular Names, who were conjured to torment the Lord *Somerset* and Sir *Arthur Manwaring*, if their Loves should not continue, the one to the Countess, the other to Mrs. *Turner*.

Finally, these faithful Servants of the Devil, obtain'd the due Reward of their Deeds. Mrs. *Turner* was serv'd first, who being found guilty of the barbarous Murder committed upon Sir *Thomas Overbury*, was condemn'd for the same, and hang'd at *Tyburn*, on *Wednesday, November 10. 1615.* Sir *Jarvis Ellowis* was likewise hang'd for the same on *Monday, November* the 20th following. The Viscount and Countess were likewise found guilty of the said Murder, for which they were committed to the *Tower*; and altho' the King pardon'd them, they in a short time pined away their Lives, dying in the utmost Disgrace. At this time my Lord of *Somerset* little thought to have been laid in the *Tower*, and made Heir of *Overbury's* Bed-chamber; but by this Course we may see, That ~~all~~ Things are in the Hands of God.



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